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Massachusetts Law Quarterly

Volume XXXVII DECEMBER, 1952 Number 4

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ANNOUNCEMENTS

Award of $250 for an effective plan to relieve congestion in the Superior Court. At the meeting of the Executive Committee of the Massachusetts Bar Association on November 19 it was

"VOTED: That a $250 award be offered to the person submitting that essay which, in the opinion of the Executive Committee, proposes the best plan for relieving the congestion of the docket in the Superior Court, all such essays to be submitted not later than April 1, 1953."

MIDWINTER MEETING IN FEBRUARY

The midwinter meeting will be held in Greenfield at the Hotel Weldon on Friday and Saturday, February 13-14, 1953. Notice and program will be sent out later.

REPORT AND PROPOSED ACT OF THE DISTRICT COURT SURVEY COMMITTEE

Report of "Commissions" and committees and of the Judicial Council relative to the District Courts have been reprinted in the "Quarterly" for the past thirty years or more. A history of the discussion since 1876 was printed in the Law Society Journal for February 1945 and in the 'Quarterly", Vol. XXX, No. 1, May, 1945. The recent survey by the committee of the law schools of Massachusetts has been the most extensive yet made in its methods of study, including conferences with bar association committees and a questionnaire to the entire bar. Accordingly, we reprint, herein, a summary of their report and the text of the proposed act submitted and pending before the legislature, so that the bench and bar may know what is going on.

The announcement in large sensational headlines in some newspapers on December 2, 1952 when the bill was filed that twenty-five more judges were proposed was utterly mistaken and indicated that the reporter did not read the press release. The bill does nothing of the kind. It proposes to carry out the "full time" judicial service plan by making 24 of the present part-time courts, into full-time courts with the addition of only one new judge. A special committee was appointed by President Sears to confer with the Survey Committee in connection with the Survey. The members of the committee are

Daniel J. Daley, Boston, Chairman

Raymond F. Barrett, Quincy — William F. Hallisey, Brockton

John Z. Doherty, Lynn — Robert I. Smith, Worcester

On the unanimous recommendation of this special committee the Executive Committee endorsed the bill.

THE BOSTON TRAVELER ARTICLES SPONSORED BY THE MASSACHUSETTS BAR ASSOCIATION

Attention is called to the series of articles entitled "It is the Law", appearing in the Boston Traveler, generally on Mondays, Wednesdays and Fridays, beginning November 24, 1952. These anonymous articles sponsored by the Massachusetts Bar Association are prepared and screened by a committee appointed by President Sears with the approval of the Executive Committee. They are published (as stated with each one) not as advice but informative as part of the public service of the organized bar.

IN LIEU OF SOCIAL SECURITY

By ALFRED C. SHEEHY,

Deputy Director, Savings Bonds Division, Boston
(Published on Request of the Representative of the Treasury Department)

Social Security programs do not include the physician, the lawyer, the architect, the accountant, the engineer, the clergy, the dentist, the funeral director and other professional groups not in regular employment.

This is not an oversight, but is a decision of our law makers based on the sound premise that these professional persons have incomes sufficient to make their own financial arrangements, investments, and income-producing plans to assure adequate retirement when the ability to earn has diminished or terminated.

Some professional people have made insurance provisions, some have acquired income-producing stocks or bonds, many have made imprudent investments to their great grief, but the greatest throng are those who have decided to make profitable investments but just haven't got enough immediate cash ahead to take the contemplated step. Consequently, as months and years roll by, things remain where they were—undone.

Right here is a ready answer to many who have this problem to contend with. Your Government has provided a Series E Defense Bond in seven denominations—from $25 to $10,000—all of which can be purchased for seventy-five per cent of their redemption value, maturing in nine years and eight months, paying three per cent interest to maturity. These may be extended for an additional ten years by merely holding them after maturity, thereby returning an additional thirty-three and one-third per cent over the face value for the extended time. In the event that an emergency arises, they can be cashed at any time after they are sixty days old.

All commercial banks where a professional man may carry a checking account have made the "bond-a-month" plan available

to depositors. Under this plan a depositor executes a very simple order to the bank, directing the bank to issue a bond of a selected denomination every month, charging the issue price of the bond to his checking account and deducting it from his monthly balance. The bond is delivered regularly each month to the depositor. This order may be increased, decreased, or terminated at will. The procedure is automatic and the bonds begin to accumulate.

Twenty years from the time this process commences, the bonds become available for current income, paying the face value plus one-third earned during the extension period, thus providing a nice income with regularity from an investment in the safest security ever known. This has an advantage over insurance or social security plans in that if a part of the accumulation is needed to meet unforeseen expenses or an emergency, all that has to be done is to take enough of the bonds to the nearest bank for immediate payment, the redemption value at any given time being computed from the issue date appearing on the face of the bond.

It's as simple as that, and the story is complete. Why not look into it the next time you make a bank deposit?

RECORDS ON APPEAL UNDER THE NEW RULES OF THE SUPREME JUDICIAL COURT

By LEE M. FRIEDMAN

In the new Rules of the Supreme Judicial Court, which became effective July 1, 1952, perhaps none of the innovations has given rise to more discussions over problems involved than Rule 2 "Designations and Counter Designations of Records on Appeal or Report in Equity, or Probate, Certiorari, or Mandamus Proceedings".

The rule deals largely with the form of appeal records to be submitted to the full Court, the procedure of their preparation and formulation. The object of the rule is plain. The courts want these records to eliminate all evidence and matters not directly involved and pertinent to issues on which the appeal is based. We are to do away with the long, swollen records reproducing everything with verbatim transcription of all the testimony in the lower Court, colloquies, with remarks of the trial judge, which have increasingly been making their appearances in the full Court.

By and large, although not completely, the rule is modeled on the practice which has been adopted in the Federal Courts.

The first important change is that it places upon the appellant the filing of a "designation" which shall set forth all that he desires to be contained in the appeal record. The appellee then has the right to file a "counter designation" in the designation or designating any additions he thinks necessary.

Both of these are to be affirmative in suggesting what the record should contain. The counter designation is not to set forth objections to the designation. Objections to a designation or counter designation may be made by motion or taken care of at the hearing under subsection (F).

This raises a first question: Are these designations themselves and counter designations to be included and printed as part of the record? If there is final agreement between the parties as to the record, there seems no necessity for their printing. If the parties are at odds on the record and a claim is to be raised under subsection (H)[1] of the rule, then their printing seems necessary.

Perhaps the greatest change in practice is that "condensations of portions of the transcript" of the evidence is desired. Hithertofore it was practically impossible to get a reversal or interpretation of findings of fact of the trial judge on oral evidence—except in the rate case where you have an agreement as to what the record was, both by the parties and by the trial judge—unless a full verbatim report of all the evidence was contained in the printed record.[2] Now a condensation such as we have been accustomed to in Bills of Exceptions seems invited. It is to be assumed that some testimony may be condensed and narrated, while other is reproduced verbatim, and that even the testimony of a single witness may be both condensed while other part is question and answer.

The rule provides that where evidence is to be part of a designation, the appellant shall file a transcript of the evidence with the Court Clerk, who shall thereupon give notice of such filing to the parties.

Here arises a practical question: An appellant has to order the transcript from the Court stenographer, who gets it out as engagements and other obligations afford opportunity to furnish it. It may be weeks and sometimes even months before a transcript is obtained. It is delivered to the appellant, who pays for it. Then he prepares his designation. When he has finished using it for that purpose, it is filed. After the designation is filed the appellee has fifteen days for his counter designation. What access has he to the transcript of the testimony? Can he take it, a Court record, from the Clerk's possession? The only provision under which it would seem that the Clerk can allow the transcript of testimony to leave his possession is subsection (G), under which

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[1] If the full court finds that any portion of the record unnecessary to a proper presentation of the case has been incorporated at the instance of any party, the whole or any part of the cost of printing may be ordered to be paid by the offending party.

[2] Romanausky v. Skutulas 258 Mass. 190, 193-4.
Gordon v. Guernsey 316 Mass. 106, 107-8.
Silke v. Silke 325 Mass. 487, 489.

the full Court may require the Clerk to deliver the transcript to it. Must the appellee sit in the Clerk's office and work over the designation and there produce his counter designation? Nor is there any method by which the appellant can take the transcript when he has to deal with the counter designation. Would it not be better that the transcript of the testimony be delivered to the appellee with the copy of the designation required by subsection (D), to be sent him on the day of its filing and, within fifteen days, returned by the appellee, with copy of his counter designation, to the appellant and by him later filed in the Clerk's office?

In the Federal Court there is a requirement that the appellant shall specify as part of his appeal the points or issue proposed to be relied upon in the appeal. There is no suggestion of such a requirement in Rule 2. But under subsection (F) the record is to be referred to the trial judge "who shall have the final determination as to all matters to be printed." How can the trial judge fairly determine a controversy as to what the record should be unless he is advised as to the basis of the claimed appeal?

It is further provided that if a party does not agree with the trial judge's order as to the record, an aggrieved party "may print as an appendix to his brief any such matter omitted or the testimony to the condensation of which he objects". Subsection (G) affords the means to test the merits of such a controversy.

It has been suggested that the appellant should provide in his designation for a prospective judge's certificate. How can this be done until such a certificate exists?

Rule 2(F) provides that after the designation of all parties have been filed or the times for filing have expired after notice to the trial judge "if no order relative to the matter to be printed is made by the trial judge within thirty days after the date of said notice by the clerk, the failure to make such order shall be equivalent to an approval by him."

Now if there is a designation and a counter designation and no order by the judge, what is approved?

Should not the judge have the power to extend the thirty-day period, or is that power inherent without express provision? Can extensions of time for filings of counter designations be granted and if so may they be granted by one other than the trial judge?

Is it necessary to submit a motion if an opposing party desires to expunge something from the designation or from the counter designation?

Subsection (H) of Rule 2 authorizes the full Court to order the cost of any printing inserted upon the insistence of a party, which the Court has found unnecessary, to be paid by the offending party. In the first instance, must the appellant pay all printing costs and take his chances, after the final decision, of being reimbursed by an appellee who may be execution-proof? It is

obvious that some attorney might take advantage of a situation by insisting upon such a quantity of unreasonable extra printing as to make the costs of an appeal prohibitive if the appellant has to pay for all printing. Can a trial judge, under subsection (F) in the first instance, order the printing costs divided between parties so that the appellee might be made to pay for what he insists on inserting in the record when the trial judge, at that stage of the case, is not prepared to rule that it should not be printed? Otherwise, an unscrupulous opponent might take advantage of the situation. Also, if upon final disposition the full Court finds the added matter irrelevant, then the appellant has been spared investing money in printing which might have made an appeal beyond his financial ability.

With the pressure of work in the full Court, and printing growing even more expensive, the procedure under these new rules must be worked out to save the time of the Court and condense appeal records to as short and simple limits as practical. To that end, it is put upon the trial judge to instigate condensation of testimony. With the good will of the Bar, and perhaps a little strictness from the full Court, here is one of the most promising innovations in our Court procedure which has appeared in years, which can be worked out successfully in the interests of litigants, lawyers and judges.

JURY CLAIMS IN THE DISTRICT COURTS

It seems to me that there is a defect in the legal requirements for claiming a jury in the municipal and district courts, and removal to the superior court for trial. Correctly analyzed, counsel should not be put in the position of having to claim a jury which is the trial only of facts, before the issue of fact to be tried is determined.

This principle is carried out in the rules of the Superior Court, which does not require that a claim of jury should be made until ten days after the answer is due, the answer under our practice being the method of raising an issue of fact as contrasted with an issue of law.

Applying this to a district court, there may be matters of law which counsel is perfectly willing to try to a judge in the district court equally as well as a judge in the superior court. The same case may present factual defenses which defendant's counsel feel should be tried by a jury, which is the primary fact-finding tribunal under our system. Under our present statutes and the rules of our district courts, defendant's counsel must claim a jury, and removal to the superior court by Thursday or Friday following the return day. It is possible in the same case that a demurrer or similar pleadings would raise an issue of law

and that a jury trial may never be necessary. Nevertheless, in order to protect the defendant in its claim for jury, the case must in the first instance be removed to the superior court with its incident delays rather than having quick disposition in the lower courts on the issues of law. It seems to me that this is a defect in the present system which might deserve some attention, and that if I am correct, we might thereby obviate many removals which are necessitated by our present procedure.

G. K. B.

BOOK REVIEW

PRACTICE AND PROCEDURE IN THE PROBATE COURTS—MASSACHUSETS, by Mayhew R. Hitch, 1952—630 pages—Lawyers Co-Operative Publishing Company, Rochester, New York—$15.00.

Probably the most famous published set of notes by a Massachusetts judge were the Equity Notes of Judges Richardson and Jenney. Until the present time they have served us all as our primary source book on Massachusetts equity practice.

In the present volume Judge Hitch, for many years the judge of the Bristol County Probate Court has published his notes. They consist of a collection of brief abstracts of decisions arranged by topics. While Richardson's Equity Notes was primarily text authenticated by footnotes, this book is, primarily, a series of topically arranged abstracts. It is a collection such as each of us would make in a lifetime, were we confining our practice to a single field. If we could borrow such a notebook we would gladly pay for its stenographic transcription. In this book we have such notes at less cost than the expense of copying.

For the practitioner, textbooks are primarily leads to the authorities, i.e., the court opinions. In this light, Hitch's case notes have been enlarged so that the reader has an idea of the facts and reasoning of the authorities cited.

It has been my experience to collect a tabletop of reports containing decisions apparently in conflict, only to discover after a week's work that the researcher had failed to recognize the dividing line. Sometimes this dividing criterion is discovered in an opinion by Holmes or Cardozo or some other judicial master. Often, this work would have been saved by early consultation of a good general text on the subject.

In this book there is a safeguard against much of this wasted effort by references to general notes on the subject in A.L.R. I have long advocated digest references in Massachusetts texts. It is the system used in Halsbury's Laws of England and saves much time for the practitioner. Since told by an able solicitor of how he started with Halsbury rather than with the Empire

Digest, I have followed a similar method here and find it cuts the drudgery in half. The Hitch references to A.L.R. notes will be desired by the practitioner when he is briefing for an appellate court. They supply the leads to general background, the main legal watersheds, and to what is being done on the subject in other states.

The book does not replace Newhall. It is a valuable adjunct which we will all want to have within handy reach. In 1939 Burt Hudson of the Boston Municipal Court published his notes on criminal law. I still start a problem in criminal law by reaching for Hudson. The topical grouping which has also been used by Judge Hitch makes it an easy tool. In the short time it has been on my shelves, I find myself reaching for it to start on a probate problem.

The book is entitled "Practice and Procedure in Probate Courts of Massachusetts." It is more than the adjective law of practice and procedure. It is a collection of substantive law on 125 topics from "Absentee" to "Writs". Since we all practice in the probate courts, we shall want this book within easy reach.

GEORGE K. BLACK.

CHEMICAL TESTS FOR "DRIVING UNDER THE INFLUENCE"

BY HON. LAWRENCE G. BROOKS*

Every judge who sits without jury in a criminal court is plagued from time to time with doubt as to whether the defendant charged with "drunken driving" was in fact under the influence of intoxicating liquor at the time of his arrest. This doubt, if reasonable, should be resolved, of course, in favor of the defendant. With the average juryman, however, reasonable doubt is not a factor. He does not like policemen at whose hands he may on some occasions have suffered an indignity. He may recall that on more than one occasion he considered himself lucky to have driven home after a party without having been arrested. He gives no thought to the public menace aspect of the drunken driver and so, more often than not, juries acquit defendants in these cases where more often than not they should have convicted them. The case is occasionally so flagrant as to cause the presiding judge to notify a jury that it is unfit for further service.

There are two common types of cases. A police officer notices a car following an erratic course. He stops the car, and in conversation with the operator detects an odor of alchohol on his breath. He requests the operator to step out of the car and walk a short distance. He talks with him and finally places him under arrest and takes him to the station. At the police station the defendant is interrogated by the desk officer, booked and placed in a cell, where he is likely to remain overnight since the police are reluctant, despite statutory requirement, to permit defendants charged with liquor offences to telephone for some hours after their arrest.

The next morning at court, the operator appears quite sober and probably pleads guilty to the charge of driving under the influence of intoxicating liquor. If he pleads not

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*Justice, First District Court of Eastern Middlesex. This article was written by Judge Brooks at the request of the Editor because of the pendency of the bill (H. 916 of 1952 printed at the top of p. 17) before the Judiciary Committee sitting as a recess commission. As pointed out in the "Quarterly" in 1949, (vol. 34, No. 5, Dec. 1949, pp. 10-11) the tests referred to in the bill have been in use for a long time in other jurisdictions as more accurate than nasal, or other tests, in common use here by policemen.

guilty, he may go to trial or ask a continuance in order to get a lawyer. In the latter case, the lawyer, if convinced beyond doubt of his client's guilt, will probably, though not necessarily, advise him to plead guilty or admit a finding of guilty from which the defendant may appeal well aware that juries are far more lenient to drunken drivers than are judges and that he may get a lighter sentence if convicted.

In case of a trial, either in the District Court or in the Superior Court, the evidence presented in this typical case will be somewhat as follows. The first witness for the prosecution will be the police officer who arrested the defendant. He will testify that his attention was attracted to the defendant's driving, and that when the operator was questioned, his speech was incoherent, his eyes were glassy, he was unsteady on his feet, and there was an odor of liquor on his breath. This evidence will be substantially repeated by a second officer who was either with the first officer at the time of the arrest or drove the operator to the station and escorted him to the desk. The third government witness will be the desk officer who questioned the operator prior to booking him and observed his actions. He will testify that the defendant's speech was thick, that he had difficulty in standing without leaning against the desk, that his eyes were bloodshot, and that his breath was alcoholic.

The defendant will testify that he had one or two beers several hours prior to the arrest which in no way affected his driving, that he had worked for 20 hours without let up and was so tired as he was driving home that he almost went to sleep which caused him to drive in an uncertain course. He may have a fellow worker with him in the car who will testify that he had been in the defendant's company for several hours and saw no evidence of intoxication, or that when he last saw him an hour before the arrest he was perfectly sober.

Another common type of case differing from the above only in the occasion for the arrest is as follows: The police have been notified of an accident. On arriving at the scene they find that the defendant has been in collision with another car whose operator demands his arrest on the ground that he is drunk. The police officer smells his breath, has him walk, etc., and places him under arrest. In the courtroom there is an additional witness, the occupant of the other car, who testifies that

as he was driving along the road the defendant's car, coming from the opposite direction, suddenly came over on the wrong side of the road and collided with the witness' car.

The judge has to decide whose testimony as to the defendant's condition is the more reliable. Either defendant showed unmistakable signs of intoxication as the prosecution's witnesses allege, or the witnesses were grossly exaggerating if not actually lying. Indeed, the defendant may claim that he had drunk no alcoholic liquor, but was suffering from a severe cold for which he was taking cough medicine which had alcohol in it; that he banged his head and his knee in the collision; that he had an impediment in his speech; or was extremely nervous, all of which could have made him appear intoxicated.

The judge knows of course that the defendant does not want to go to jail and lose his license and that his testimony, therefore, must be accepted with some grains of salt. On the other hand, the judge realizes that the owner of the other car will get more damages from the defendant's insurance company if he can get him convicted of drunken driving. He has a practical inducement in other words to support the police in their prosecution.

The judge, furthermore, knows from long experience that the police are also human; that they are loyal to each other, and that when an officer has arrested and brought in a driver for drunken operating the other officers do not want to let their comrade down. The arresting officer may quite justifiably have arrested a man who from his breath had apparently been drinking. His driving corroborated it. Few mathematical equations are surer than that an automobile operator with an alchohol breath plus an accident plus a police officer equals an arrest for operating under the influence. Having arrested the operator, the officer naturally wants to convict him, first because he probably thinks him guilty, secondly because he doesn't want to be sued for Assault and Battery or False Arrest. See Muniz vs Mehlman, 327 Mass. 353. That is to say, the officer has a practical inducement for his testimony and human nature prompts the other officers to corroborate it. Therefore, their testimony likewise has to be taken with several grains of salt.

Of course there are plenty of cases where the circumstances of the accident and the testimony of impartial witnesses leave the judge in no doubt whatever of the guilt of the defendant, just as there are cases where not even by a preponderance of the evidence is a defendant guilty. A type of case is here put to the reader where the evidence of both sides is suspect, and yet where evidence could have been presented which might well have conclusively convicted or exonerated the defendant. What is that evidence?

The cause of alcoholic intoxication is an excessive amount of alcohol in the blood circulating through the brain. Alcohol is absorbed by the blood from the stomach or the intestines or even the mouth. The rapidity of absorption differs with individuals. Similarly, the rapidity of oxidization differs in different individuals. One who absorbs alcohol slowly and oxidizes it quickly will be less intoxicated than one in whom the processes are reversed, both having consumed the same amount of alcohol. The rate of absorption varies with conditions. It is absorbed, for example, more readily in an empty than a full stomach. That is why it is not prudent to indulge too freely in cocktails before dinner. However, after the alchohol is in the blood, there is little variation in the effect on different individuals other perhaps than those comparatively few persons who seem to be able to hold without showing it more than their quota of alcohol. Even in their case, careful tests will disclose that they are not as sober as they appear to be.

Methods of analyzing blood content have long been known. Within a few years experts in the chemistry of blood collaborating with the medical profession have satisfied themselves as to the approximate point at which alcohol in the blood becomes intoxicating. They have evolved a scale to measure the degree of intoxication. After years of trial this scale has received the approval of the American Medical Association, American Bar Association, the National Safety Council and the President's Highway Conference. It is in active use in many courts. It may be used in any case in which it is important to determine whether an individual was under the influence of liquor at a particular time. The scale is based on the scientific fact that a human being is, in all probability, under the influence of alchohol if he has .15% or more of

alcohol in his blood. On the other hand, if the alcohol content in not over .05%, he is, in all probability, not under the influence. Between these two extremes he may or may not be under the influence. Accompanying circumstances are needed to determine his sobriety. When the alcohol content of a person's blood reaches .50% he is, if not dead, at least dead drunk.

The figure .15% represents a consumption of approximately eight ounces of whiskey or eight bottles of beer. Most persons under these circumstances are visibly affected. Of those who do not appear intoxicated to a casual observer, most will show when tested for muscular and other reactions, distinct impairment of their faculties. There are exceptions but they are so rare that for the general application of the test they may be ignored. Similarly there are exceptions to the .05% figure which represents an intake of one ounce of whiskey or one bottle of beer or one part of alcohol in 2000 parts of blood. For our purposes this exception may also be ignored.

How is this theory that certain percentages of alcohol in the blood disclose degrees of intoxication to be applied in practice? As has been stated, it is the alcohol in the brain that intoxicates. Now the percentage of alcohol in the brain is the same as in the blood elsewhere in the body. Furthermore, it is scientifically known that the amount of alcohol in the breath and the urine "directly parallels the amount of alcohol in the blood and, therefore, that from the amount of alcohol excreted through the kidneys or lungs the concentration of alcohol in the circulating blood can be determined accurately and scientifically," (Report of Traffic Court Conference, Northwestern University, 1950). Because of that fact, the test most commonly used, besides the straight blood test, to determine alcohol content of the blood are the breath test and the urine test. Of these two, the breath test is the more common.

The technique of making a straight blood test is as follows. A specimen of blood is taken from the arrested person at the police station or a hospital by a doctor, nurse, or other technician and analyzed by a competent person in a laboratory or elsewhere. The result is then produced in court. There, expert testimony has to be presented to explain to the court the significance of the analysis. The witnesses may be a doctor or a chemist familiar with the subject. If, for example, the test shows an alcoholic content of .20% and the judge is impressed

with the expert testimony, he will without question find the subject to have been under the influence at the time of the test. Experience shows that a jury will do the same, presumably because the policeman is no longer the dominating factor and because real evidence convincingly corroborates or replaces opinion evidence.

If the breath test is employed, the subject will be asked as soon as possible after arrest to breath into one of the three devices in common use to demonstrate the alcohol content of the blood. The machine will be either a Drunkometer, sometimes called a Hargermeter, after the inventor, an Alcometer or an Intoximeter. All these machines operate in a somewhat different manner but all, though a chemical process register via the breath the alcohol content of the blood. In some areas where Intoximeters are used, they are carried in police cars and are immediately available at the scene of the arrest. In very few minutes the inebriety of the operator can be either proved or disproved. The other two machines are not so easily transported and are customarily kept at some central point to which the arrested person is brought. They too, however, disclose the alchohol content in a few minutes. The straight blood test and urinalysis take longer,—20 minutes to an hour.

The persons who operate these devices of course must know their business but this can be learned without much difficulty. Police Departments frequently send a member of the force to one of the various schools where they are taught to operate the testing machine. Northwestern University is constantly conducting or arranging courses of this sort in conjunction with the Special Committee on Traffic Court Program of the American Bar Association and the International Association of Chiefs of Police.* The main thing is that the machine be in good working order and that the operator know his business. Experience shows that by and large the results successfully and accurately disclose blood content.

Where the breath test, by any of the three methods, has been used, the result, as in the straight blood test, has to be introduced in evidence and explained to the court in the same manner as in the straight blood test. Because the practice of placing before the court and explaining the significance of a

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* For training program in Massachusetts see page 23 and Note.

blood test, by whatever method, requires expert testimony which is not always easy to secure and usually expensive, the National Safety Council some years ago drafted a uniform statute which is now law in fifteen states. The statute proceeds on the theory that the scale previously described is scientifically sound and entitled to legal acceptance just as clinical thermometer readings are universally recognized as accurate evidence of body temperature.

The statute eliminates the necessity of summoning expert witnesses to testify to the scientific basis for the percentages incorporated into the scale. It enables the court to admit in evidence the scientifically recognized scale. This is accomplished by providing that it shall be prima facie evidence of a person's sobriety if the test shows the alcohol content to be .05% or less; that he is prima facie under the influence if the test shows .15% or over; that in between these figures there is no presumption either way and that other evidence may be introduced bearing on the individual's condition. The statute relieves the court of the necessity of requiring an expert explanation of a scientifically demonstrated and accepted fact which in the absence of the statute would have to be laboriously proved. It is in line with intelligent legal procedure.

The last two sessions of the Massachusetts legislature have entertained a bill patterned on the uniform act drafted by the National Safety Council, to permit the introduction of evidence of tests herein described on a prima facie basis. This bill had the support of the National Safety Council which sent on a representative from Chicago to speak at the hearings. A supporting letter came from the director of the Traffic Court Program of the American Bar Association and from the Boston Committee on Alcoholism. Endorsements were presented from experienced prosecutors in other states familiar with the use of blood tests. Three district attorneys of wide experience in Massachusetts joined in this support. A representative of the American Automobile Association spoke in favor of the bill. The Registrar of Motor Vehicles endorsed the bill having become satisfied after careful survey of the situation in Massachusetts and elsewhere that this type of legislation was not only desirable but essential if the drunken driving problem was to be successfully attacked. Local experts in the chemistry of blood testified to the scientific soundness of the scale.

HOUSE 916

AN ACT RELATIVE TO THE EVIDENTIAL VALUE OF CERTAIN BLOOD TESTS IN CONNECTION WITH THE TRIAL OF PERSONS CHARGED WITH OPERATING A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR.

Paragraph (1) (a) of section 24 of chapter 90 of the General Laws, as amended by chapter 145 of the acts of 1938, is hereby further amended by adding at the end thereof the following:— Evidence that there was, at that time, five one hundredths per cent, or less, by weight of alcohol in his blood, is prima facie evidence that the defendant was not under the influence of intoxicating liquor within the meaning of this section. Evidence that there was, at that time, from five one hundredths per cent to fifteen one hundredths per cent by weight of alcohol in his blood is relevant evidence but it is not to be given prima facie effect in indicating whether or not the defendant was under the influence of intoxicating liquor within the meaning of this section. Evidence that there was, at the time fifteen one hundredths per cent, or more, by weight of alcohol in his blood, is prima facie evidence that the defendant was under the influence of intoxicating liquor within the meaning of this section.

The proposition is a novel one to all but a few in the state of Massachusetts. The legislature is, therefore, disposed to proceed with caution. Not unnaturally it queries the soundness of the scale and the accuracy of the devices employed in the tests. It questions whether the motorist is properly protected (despite the endorsement of the American Automobile Association). As a matter of fact, the primary purpose of the bill is to simplify evidentiary procedure, just as by statute a plaintiff in a tort case in the absence of evidence to the contrary need not prove his due care.

In forty-two states chemical tests by one method or another are employed to aid the court in determining sobriety of automobile operators. Over thirty-seven thousand such tests were given in 1952. The only states where the tests have not been given are Arkansas, Louisiana, Georgia, Kentucky, Wyoming, and Massachusetts. Massachusetts, however, has recognized the validity and usefulness of blood tests in criminal cases other than automobile cases, (Commonwealth vs. Capalbo, 308 Mass. 376).

The application of chemical tests to intoxicated operators has accomplished two results. It has not infrequently disclosed to the satisfaction of the police that the supposed drunk had something entirely different the matter with him or that the amount of alcohol in his system was quite insufficient to affect him. He is therefore not brought before the court. Indeed he may be given medical aid which saves his life. There are several cases where diabetics have been arrested as

drunks. Some have died in jail before their true condition was discovered. There are sixty-four pathological conditions which resemble intoxication by use of alcoholic liquor. The test, in other words, protects the innocent motorist.

On the other hand, the result of the test may satisfy the defendant or his lawyer that he hasn't a chance of acquittal and he pleads guilty. Statistics of the National Safety Council amply demonstrate that in either case the taxpayers are time and again saved the expense of a jury trial. In Massachusetts this is estimated to be not less than $600 a day.

However, if the defendant, despite the test, persists in going to trial, he is moderately certain, judging by the experience of other communities where chemical tests are used, to be convicted. The judge will no longer be plagued with doubts and even the juries which now almost automatically take sides against the police or identify themselves with the defendant will do their duty and protect the community rather than the drunken motorist.

An interesting body of criminal law is being built up in connection with chemical tests. It is far too voluminous to discuss in detail in this article. A few citations will serve to show the problems involved and the trend of the cases. The following illustrations may be of interest.

Commonwealth vs. Capalbo, 308 Mass. 376—Blood tests are admissible as the expert testimony of a qualified witness.

McKay vs. Texas, 235 S. W. 2nd 173, upholds the admissibility of testimony concerning the blood test, quoting from the 1950 report issued by North Western University previously cited, in part as follows:

"The prosecution need not longer rely solely upon . . . objective symptoms. Scientific methods have been developed for determining the alcoholic concentration in the blood by the chemical analysis of blood substances, i.e., blood, urine, breath, saliva, or spinal fluid. Such analysis will determine exactly the extent to which a suspect is under the influence of intoxicating liquor. The evidence of the results of such chemical analysis may be used to supplement the evidence obtained from observation of the accused. Medical science, through years of research and experimentation, has established that *it is not the amount of alcohol consumed by a person that affects his driving ability but the amount of alcohol absorbed into his blood,* and thus circulated to the brain, that affects his nerves and, correspondingly, his mental and physical facilities."

In Natwich vs. Meyer, et ux, 177 Oregon 486, the court held that the results of tests of blood specimens given voluntarily were admissible in evidence because

"chemical tests of blood and urine to determine degree of intoxication have reached a stage of scientific development and reliability where they may serve a most useful purpose in assisting courts and juries to discover the truth where intoxcation is the issue."

Wisconsin and Georgia cases are to the same general effect. No high court has reversed the action of a lower court for accepting testimony of properly qualified experts concerning the results of blood tests obtained from a voluntary defendant. In State vs. Morkrid, 286 N. W. 412 the Iowa Court held that if a specimen of blood and urine were voluntarily given, the defendant was not being compelled to testify against himself. To a similar effect was the decision in Novak vs. District of Columbia, 49 A. 2nd 88.

The Indiana Court in Spitler vs. State, 46 N. E. 2nd 591 held that by voluntarily undergoing a Drunkometer test, the defendant waived constitutional immunity from testifying against himself. To the same effect are State vs. Cash, 219 N. C. 818, State vs. Small, 11 S. E. 2nd 377 (Florida) and State vs. Haner, 1 N. W. 2nd 91 (Iowa). An Arizona Court has held in State vs. Duguid, 50 Ariz. 276 that the fact that defendant did not know the purpose for which the test was made did not make the results inadmissible. The Colorado Court held in Hanlon vs. Wodehouse, 160 P. 2nd 998 that a blood test made on an unconscious defendant was admissible as not being a privileged communication.

Another type of case arises where the defendant is sufficiently intoxicated so that the court is uncertain whether he understood what was happening when, without his objection, a blood test was made. In State vs. Sturtevant, 96 N. H. 99, the defendant on an appeal from conviction, claimed that he had been called upon to furnish evidence against himself in violation of Article 15 of the Bill of Rights. The court, treating the matter as though the defendant was incapable of giving consent, upheld the conviction. Recognizing that jurisdictions were divided upon the effect of privilege against self-incrimination, the court took its stand squarely with those that distinguished between testimonial evidence and real evidence.

The New Hampshire court rested on the decision of the Oregon court in State vs. Cram, 176 Oregon 577 where the defendant was unconscious at the time of the blood test. In that case the court quoted with approval the language of Justice Holmes in Holt vs. U. S., 218 U. S. 245, 252, 253:

"but the prohibition of compelling a man in a criminal court to be a witness against himself is a prohibition of the use of physical or moral compulsion to extort communications from him not an exclusion of his body as evidence when it may be material."

The New Hampshire decision cites many cases in support of that position. Maryland, New Jersey and Pennsylvania courts, like the New Hampshire and Oregon courts, follow Justice Holmes and, incidentally, Wigmore (Evidence 3rd Edit. Vol. VIII, section 2263) in interpreting constitutional provisions with respect to oral evidence on the one hand, and real evidence on the other hand. See, however, Apodaca vs. State, 146 S. W. 2nd 381 (Texas) where the conviction was reversed because the court considered that forcing a defendant to give a specimen of urine violated the state constitutional prohibition against a person being compelled to give evidence against himself.

The Iowa court in State vs. Weltha, 228 Iowa 519 excludes such evidence because of the constitutional provision against search and seizure. That is the federal rule. See Weeks vs. U. S., 232 U. S. 383, which the New Hampshire court held did not bind the states.

Despite the Weltha decision, the Iowa court permits comment by the prosecuting officer on defendant's refusal to submit to a test. State vs. Benson, 230 Iowa 1168. The Ohio court takes a similar view. See State vs. Gatton, 60 Ohio App. 60, P. 192 and State vs. Nutt, 78 Ohio App. 336.

In the Gatton case the court was asked to reverse a conviction of a defendant charged with drunken driving because the trial court admitted in evidence the testimony of the sheriff that he had asked the defendant to submit either to a blood test or a urinalysis and that defendant had refused. It was argued that this contravened defendant's right not to testify against himself.

A recent decision of the U. S. Supreme Court, Rochin vs. California, Advance Opinions 1951-1952 p. 154, exhaustively surveys the subject of the forcible obtaining of real evidence.

In that case the officers of the law, after illegally breaking into the appellant's house, forced him to take an emetic causing him to vomit up a narcotic capsule which was offered and accepted in evidence and served to convict him. The California Supreme Court, 101 App. 2nd 140, while deploring the methods used felt itself bound by a series of California decisions to admit the evidence so disgorged. In reversing the California decision, the United States Supreme court in its majority opinion held that the due process clause of the Fourteenth Amendment empowered the United States Supreme Court to reverse a state court where the result of that court's decision "shocks the conscience", "offends a sense of justice", or runs counter to the "decencies of civilized conduct." Said Justice Frankfurter:

"It would be a stultification of the responsibility which the course of constitutional history has cast upon this court to hold that in order to convict a man the police cannot extract by force what is in his mind but can extract what is in his stomach."

Justice Black and Justice Douglass concurred in the reversal, but rested their decisions on violation of the Fifth Amendment:—"No person . . . shall be compelled in any criminal case to be a witness against himself." Justice Douglass said:

"The evidence obtained from this accused's stomach would be admissible in the majority of states where the question has been raised. So far as the reported cases reveal, the only states which would probably exclude the evidence would be Arkansas, Iowa, Michigan, and Missouri. Yet, the court now says that the rule which the majority of the states have fashioned violates the 'decencies of civilized conduct'. To that I cannot agree. It is a rule formulated by responsible courts where the judge is as sensitive as we are to the proper standards for law administration."

In Justice Douglass' view, the due process clause did not supply a basis for a workable rule in such cases whereas the Fifth Amendment did. He said:

"I think that words taken from his lips, capsules taken from his stomach, blood taken from his veins are inadmissible provided they are taken from him without his consent. They are inadmissible because of the command of the Fifth Amendment."

The Rochin decision leaves us in doubt as to what the Supreme Court majority would do if persons under arrest were compelled to submit to blood tests without brutal incidentals.

Hard cases notoriously made bad law. The Rochin case was a hard case. Justice Frankfurter's opinion reflects his own deeply stirred feelings. Justice Douglass may be right that "decencies of civilized conduct" constitute an illusive criterion for legal pronouncement. On the other hand, the public interest requires the preservation of those decencies and a minimum of official lawlessness. Furthermore, is there not a valid distinction, as Justice Holmes points out, between oral evidence extorted and therefore unreliable and real evidence which no amount of compulsion can alter? If so, then the Fifth Amendment is not the answer.

Our founding fathers were worrying about the Star Chamber and its methods of persuasion, not about such things as birthmarks, fingerprints and body fluids. If Justice Douglass is correct, how do we justify compulsory physical examination of prisoners? Should a policeman not be allowed to testify to a defendant's alcoholic breath on the ground that it incriminates the defendant? Suppose that a blood test would definitely prove or disprove paternity (now it can only in occasional cases disprove), what justification could there be for allowing the accused to refuse a blood test? A fetish should not be made of the Fifth Amendment to protect enemies of society and surely a drunken driver is, for the moment, precisely that. Just as he can be fingerprinted against his will and these fingerprints be used against him, so logically should his breath or any other aspect of his body be allowed to testify in the interest of society provided always that the methods employed to obtain the evidence shall not run counter to the "decencies of civilized conduct."

The bill currently under discussion makes no reference to compulsion. It is unlikely that public opinion would countenance it. If, however, compulsion were employed, the responsibility would then be upon the court to interpret the Fourteenth and the Fifth Amendments in the light of the evidence and the decisions. Meanwhile, perhaps, a new conception of the "decencies of civilized conduct" will have penetrated the conscience of these motorists who have long listened without heed, to the advice of the Registry of Motor Vehicles in Massachusetts: "If you want to drive, don't drink. If you want to drink, don't drive."

A Demonstration and Its Results (see next page).

A DEMONSTRATION AND ITS RESULTS

At the suggestion of the special Legislative Commission appointed to study the pending bill, a demonstration was held at the Malden court house, December 23, 1952. Three tests were made starting at 2 P.M. on each of four individuals volunteering their services. There was a straight blood test, a specimen being taken from each individual and analyzed in the laboratory of the Department of Public Safety. Each individual also breathed into an Alcometer and a Drunkometer. The Intoximeter representative was unable to be present.

Exhibit No. 1 had drunk no alcoholic liquor. Exhibit No. 2 had imbibed approximately 12 ounces of whiskey during an hour ending about 30 minutes prior to the tests. Exhibit No. 3 between 9 A.M. and 1 P.M. had imbibed 17 ounces of whiskey and 17 glasses of beer. Exhibit No. 4, during a similar period, had imbibed 22 ounces of whiskey and 22 glasses of beer. The Drunkometer test to be quite accurate should have been supplemented by a weight test. Even so, the comparative figures below are interesting. They represent the alcohol percentage of the blood.

Exhibit	*Blood Test*	*Alcometer, Breathing Test*	*Drunkometer, Breathing Test*
1	0	0	0
2	.11	.085	.125
3	.12	.125	.15
4	.21	.215	.235

NOTE ON POLICE TRAINING PROGRAM IN MASSACHUSETTS

Northeastern University in Boston in cooperation with Northwestern University, Chicago, annually in March, puts on a two week Traffic Training Program for police. This coming March the program will include a five day course in the conduct by chemical tests and operation of the various devices.

THE BRANCH SAVINGS BANK CASE—*CERTIORARI* DENIED—MEANING OF THE DENIAL

The October issue contained a discussion of this case (*Springfield Institution for Savings and Others* v. *Worcester Federal Savings and Loan Association and Another*, 1952 A.S. 743). On November 17, 1952 the Supreme Court denied *certiorari* in this, and a number of other, cases. On that occasion, as reported in the Boston Herald of November 18, Mr. Justice Frankfurter "issued an independent statement, emphasizing that a 'misconception' of the Supreme Court's denial to grant hearings, 'persists despite repeated attempts at explanation.' Regarding such a refusal, he said today:

"'It means, and all that it means is, that there were not four members of the court to whom the grounds on which the decision of the court of appeals was challenged seemed sufficiently important when judged by the standards governing the issue of the discretionary writ of certiorari.

"'It also deserves to be repeated,' he added, 'that the effective administration of justice precludes this court from giving reasons, however briefly, for its denial of a petition for certiorari.'"

The title of the article in the October "Quarterly" was "The Federal Government Wins More Power—Another Nail for the Coffin of Local Self-Government." It may not be amiss to state that a number of thoughtful lawyers, not any way connected with the case, have expressed agreement with the comments made, and the news expressed, in that article. As stated, at the top of page 9,

"The court also says 'there is nothing inconsistent with what we here say in *Commonwealth* v. *McHugh*, 326 Mass. 249, 265-266.' But we suggest that those pages be read in full. The two opinions seem to us inconsistent in the approach to federal statutes 'over subjects that historically have been within the competence of the state.'"

With the greatest respect, they still seem to us inconsistent and likely to cause unfortunate uncertainty as to the approach to interpretations of federal statutes in future. We hope the approach in the McHugh opinion will ultimately prevail in the interest of the people of Massachusetts and their right to local government.* F. W. G.

* Cf. "The Increasing Importance of State Supreme Courts" by the late Walter Armstrong in A. B. A. Journal, January, 1942.

SUMMARY OF THE DISTRICT COURT SURVEY COMMITTEE'S REPORT WITH DRAFT ACT

By LAWRENCE B. URBANO*

A bill embodying a plan of reorganization for the district courts in Massachusetts has been drafted by the District Court Survey Committee. The proposal was filed in the legislature by Senator Richard H. Lee of Newton and Senator Andrew P. Quigley of Chelsea, and the petition was also signed by the members of the Survey Committee.[1] A copy of Senate Bill No. 247 as filed is attached hereto.

The Committee's plan has as its principal object the establishment of full-time judicial service in the district courts. Approximately 85% of the lawyers who returned the questionnaires sent out last year by the Survey Committee expressed a desire for a full-time judiciary. An intensive program of visits to courts, discussions with bar association groups[2] and examination of material previously published confirmed the questionnaire results that full-time judges are greatly needed in the district courts.

The basic change from a system of part-time judicial service to one that is full-time poses several problems. In so far as the new organization is concerned, there must be a policy of full-time service at full-time pay, but with a reasonably full-time workload. Any other approach would be socially and economically unsound. Since the new system involves courts

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[1] The Survey Committee was formally organized in September 1951 with Livingston Hall, Chairman, Vice Dean, Harvard Law School; Elwood H. Hettrick, Dean, Boston University School of Law; Lowell S. Nicholson, Dean, Northeastern University School of Law; John D. O'Reilly, Jr., Professor of Law, Boston College Law School; Frank L. Simpson, Dean Emeritus, Suffolk University Law School; and the late A. Chesley York, Dean, Portia Law School, as its members, and Lawrence B. Urbano, Esquire, as its Director.

[2] The Survey Committee is greatly indebted for advice and counsel to a Committee of the Massachusetts Bar Association appointed by President Samuel P. Sears, which includes Daniel J. Daley, Esq., Boston, as its chairman; and Raymond F. Barrett, Esq., Quincy; William F. Hallisey, Esq., Brockton; John Z. Doherty, Esq., Lynn; and Robert I. Smith, Esq., Worcester, as its members, and to members and officers of 11 county and city bar associations who have been consulted.

having jurisdiction of several hundred thousand cases a year, it must retain the virtues of accessibility and speed.

In establishing this new system, proper regard must be had for the present personnel of the district courts. Many have spent long years in public service. There must also be provision made for the adjustment of minor difficulties that inevitably occur when a large reorganization is attempted. The need for the proper disposition of cases goes on without pause for changes in the system.

With these considerations in mind, the Survey Committee devised a plan that it feels will (1) eventually reach the primary goal of full-time judges, (2) give immediately wide benefits of full-time judicial service in deciding 86% of all district court cases, and (3) make an easy transition from the old to the new system. The plan does not apply in any respect to the counties of Barnstable, Dukes County and Nantucket. Travel difficulties and the light judicial load make it impractical there at this time.

The Transition to Full-Time Judicial Service

In brief, the proposed plan makes 24 more of the larger part-time district courts full-time,[3] and provides for the appointment of one additional full-time judge in eastern Middlesex.[4] With the 20 full-time judges already in the district and municipal courts,[5] this would give 45 full-time judges. These full-time judges would hear both civil and criminal cases in their own courts in districts including 72% of the population of the Commonwealth, and would also hear all civil[6] cases in all the other courts except in the counties of Barnstable, Dukes County and Nantucket.

The part-time presiding judges whose courts do not become full-time continue with salaries, tenure, and powers unchanged except as to civil cases.[7] As vacancies occur in their ranks their positions would not be filled, but full-time justices would be assigned by the administrative committee to sit in their

[3] C. 218 § 6 in Bill § 2.

[4] C. 218A § 2 in Bill § 20.

[5] Listed with * in C. 218 § 6 in Bill § 2.

[6] "Civil" excludes small claims, supplementary process, and matters relating to juveniles and insane persons (C. 218 § 40 in Bill § 8).

[7] C. 218 § 78 in Bill §16.

courts.[8] At certain stages additional full-time judges are to be appointed until ultimately the entire business of the district courts would be handled by 52 full-time judges.[9]

The present number of full-time judges in each county, the number during the transition period when the plan first goes into effect, and the final number, are as follows:

County	*Number of Full-Time District Court Judges*		
	At Present	*Transition Period*	*Final Plan*
Barnstable	—	—	—
Berkshire	—	1	2
Bristol	1	2	3
Dukes County	—	—	—
Essex	—	3	3
Franklin	—	1	1
Hampden	2	3	5
Hampshire	—	1	1
Middlesex	3	8	11
Nantucket	—	—	—
Norfolk	1	3	4
Plymouth	—	1	2
Suffolk	11	18	15
Worcester	2	4	5
	20	45	52

Special justices would continue in the same capacity that they now act; however, like the part-time presiding justices, they would not hear civil cases except under certain limited conditions.[10] They continue to receive their present *per diem* salaries.[11] It is estimated that the work of the specials would be reduced by about fifty per cent. They are therefore given an alternative basis of the past 10 years upon which to compute pensions when they become eligible.[12] No new part-time special justices,[13] trial justices,[14] or justices of the peace with the judicial power of trial justices,[15] are to be appointed.

[8] C. 218 § 40A in Bill § 8.
[9] C. 218A §2 in Bill § 20.
[10] C. 218 § 40 in Bill § 8.
[11] C. 218 § 6A in Bill § 2.
[12] C. 32 § 65B in Bill § 25.
[13] C. 218 § 6A in Bill § 2.
[14] Bill § 21.
[15] C. 218 § 36 in Bill § 6.

The Suffolk County Courts

All the Suffolk County district and municipal courts are put on a full-time basis, with assignments made by the Chief Justice of the Municipal Court of the City of Boston.[16] Rule making powers are placed in the judges of all the Suffolk County courts sitting jointly.[17] Provision is made for including all these courts in a Suffolk county appellate division.[18]

There are also a number of clarifying amendments to permit the consolidation during the transition period of the district and municipal courts in Suffolk County into what is in effect a county circuit court.[19]

Salaries and Costs

The district courts themselves are left with their staffs undisturbed. No courts or sittings are eliminated. The change is almost entirely restricted to the judiciary. This means that the statutory provision that the pay of clerks of the present part-time courts shall be based on a percentage of the presiding justice's salary must be eliminated. The Survey Committee, after discussions with a number of interested persons, has added the clerks of all the district courts outside Suffolk County to the list of those district court clerks already subject to the County Personnel Board,[20] but without reduction in salary for any particular individual now in office.[21] (The Committee understands that the District Court Clerks Association has independently voted to present a bill to the legislature for this same change.)

Upon the almost unanimous recommendation of those with whom the Committee has discussed the matter, a salary of $12,000 a year (the present salary of the Associate Justices of the Municipal Court of the City of Boston) has been fixed for the full-time justices.[22] The proposed plan would result in an immediate increase in judicial salaries of approximately $65,000 a year. This additional cost would decrease each year until ultimately a saving of $68,000 a year in salaries over the

[16] C. 218 §§ 39A and 51 in Bill §§ 7 and 13.
[17] C. 218 §§ 43 and 50 in Bill §§ 9 and 12.
[18] C. 231 § 8 in Bill § 22.
[19] Bill §§ 3, 5, 10, 11 and 23, and C. 218A § 4 in Bill § 20.
[20] Bill § 17 and C. 35 § 49 in Bill § 26.
[21] Bill § 27.
[22] C. 218 § 77A in Bill § 15.

present system would be achieved. (The principal reason why the initial increase in costs is relatively small is that 24 of the 25 new full-time judges are to be taken from the larger part-time courts. Salaries in those courts are already fairly substantial.) Necessary travel expenses on circuit are allowed.[23]

Further Reorganization Possible by Later Legislation

As the bill shows, new judges would be appointed, not to particular district courts as at present, but to newly established county courts.[24] They are given the salaries, pensions and powers of district court judges, and will be assigned to sit in particular district courts by the administrative committee.[25]

Since all cases will continue to be brought and heard in the district courts,[26] the county courts are, as a practical matter, courts only in name. This procedure has, however, certain distinct legal advantages.

First, the present district court system is disrupted as little as possible; indeed, the only noticeable change to lawyers and litigants will be that full-time judges will take over the bulk of district court work immediately, and all of it eventually.

Second, by the time all judges in the district courts are on a full-time basis, a clear picture will be had of the result in terms of caseloads. The structure of the district courts may then be reorganized into a county court system on the basis of facts, not guesswork.

Third, when such a reorganization of the structure of the courts is made, it will be with the advantage of having already taken into account the constitutional provisions in regard to the appointment and tenure of judges.

Questions Frequently Asked

The Survey Committee in discussing the plan with bar association groups and other interested parties has consistently been asked two questions:

"Why are the criminal and civil cases heard separately during the transition period?"

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[23] C. 218 § 81 in Bill § 18.
[24] C. 218 § 6, and C. 218A § 1 in Bill §§ 2 and 20.
[25] C. 218A § 3 in Bill § 20 and C. 32 § 65A in Bill § 24.
[26] C. 218A § 1 in Bill § 20.

There are four important reasons for providing that all the civil cases should be heard by full-time judges at once:

(1) A judge paid on a full-time basis must have a job that is substantially full-time. The appointment of more full-time judges is justified if they handle all the civil cases.

(2) It permits wide-spread immediate benefits of full-time judicial service in civil cases in all the district courts.

(3) Questionnaire returns and discussions with lawyers and bar association groups indicate that the possible abuses inherent in a system of part-time judges are most serious in civil cases.

(4) The circuit idea is immediately put into effect while the basic district court organization remains intact. This permits the easy adjustment of minor organizational difficulties that are bound to arise whenever a substantial change is undertaken, and at the same time insures the continued flow of cases through the district courts.

"What happens to a criminal defendant if there is to be no criminal sitting of the court for several days?"

This question becomes acute only when a number of the present presiding justices have retired. Until that time criminal cases will be handled just as they are today.

But when only full-time justices are on the bench, a defendant may be arrested within the jurisdiction of one of the smaller courts which is not scheduled to hold a criminal sitting within 24 hours. (If the defendant is released on bail or otherwise, there is still no problem, for he will be directed to appear at the court's next sitting.) Where the defendant cannot give bail, no one wants him to be held for several days until a judge is due to sit in the court.

The Committee's solution to this problem is to have unbailed defendants in these cases taken by the persons having custody of them to the nearest district court in the county, if there is one known to be scheduled to hold an earlier criminal session.[27] This does not mean, however, that there will be any serious transportation problem for the police. The larger centers of population will have sittings every day, and unbailed criminal defendants are relatively rare in the rural areas. It is the opinion of the Survey Committee that these factors will prevent any undue burden falling upon the police.

[27] C. 218 § 2B in Bill § 1.

Conclusion

The Survey Committee has, in its proposed plan, attempted to draft a measure that will effect a cure for a major cause of present dissatisfaction with the district courts. It has concentrated upon that problem to the exclusion of many other provisions to remedy other problems. The Committee feels that the emphasis at this time should be upon taking a firm step toward the strengthening of the district courts by making them full-time courts as soon as is economically feasible. Once this is done, other reforms, after proper study, may be more easily fitted into the effort to improve the administration of justice in Massachusetts.

Suggestions and criticisms on any of the major problems covered, or on the drafting of the Bill, will be welcomed by the Survey Committee.

DRAFT ACT SENATE DOCUMENT NO. 247
NOW PENDING BEFORE THE LEGISLATURE

To accompany the petition of Livingston Hall, Elwood H. Hettrick, Lowell S. Nicholson, John D. O'Reilly, Jr., Frank L. Simpson, Senator Richard H. Lee of Newton, and Senator Andrew P. Quigley of Chelsea, for legislation providing for the reorganization of the district courts and the extension of full-time judicial service.

THE COMMONWEALTH OF MASSACHUSETTS
IN THE YEAR ONE THOUSAND AND FIFTY-THREE
AN ACT PROVIDING FOR THE REORGANIZATION OF THE DISTRICT COURTS AND THE EXTENSION OF FULL-TIME JUDICIAL SERVICE

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 218 of the General Laws is hereby amended by inserting after section 2A, inserted by chapter 325 of the acts of 1951, the following section:—

Section 2B. Where the district court having jurisdiction of a defendant arrested for committing an offense will not hold a criminal sitting within twenty-four hours after his arrest, and the persons having custody of him know of some other district court within the same county scheduled to hold an earlier criminal session, the defendant must, if possible, be brought by them before the criminal session of such other district court, unless he shall have

been released from custody on bail, recognizance or otherwise prior to such time. Such a defendant released from custody, upon his request and with the consent of the person admitting him to bail or otherwise authorizing his release, shall be directed to appear before the earlier criminal session of such other district court in the same county. Such district court shall thereupon have jurisdiction to try and dispose of the case.

SECTION 2. Said chapter 218 is hereby further amended by striking out section 6, as most recently amended by chapter 560 of the acts of 1952, and inserting in place thereof the following two sections:—

Section 6. The justices of the following district courts shall be considered as full-time justices under section seventy-seven A:

[Berkshire]	the district court of central Berkshire [Pittsfield],
[Bristol]	*the second district court of Bristol [Fall River], the third district court of Bristol [New Bedford],
[Essex]	the district court of Lawrence, the district court of eastern Essex [Gloucester], the district court of southern Essex [Lynn],
[Greenfield]	the district court of Franklin [Greenfield],
[Hampden]	*the district court of Springfield, the district court of Holyoke,
[Hampshire]	the district court of Hampshire [Northampton],
[Middlesex]	*the first district court of eastern Middlesex [Malden], the second district court of eastern Middlesex [Waltham], *the third district court of eastern Middlesex [Cambridge], the district court of Lowell, the district court of Somerville, the district court of Newton,
[Norfolk]	the municipal court of Brookline, the district court of northern Norfolk [Dedham], *the district court of East Norfolk [Quincy],
[Plymouth]	the district court of Brockton,
[Suffolk]	*the municipal court of the city of Boston, the municipal court of the Brighton district, the municipal court of the Charlestown district, the district court of Chelsea, the municipal court of the Dorchester district, the East Boston district court,

* [Courts now full time.]

*the municipal court of the Roxbury district,
the municipal court of the South Boston district,
the municipal court of the West Roxbury district,

[Worcester] *the central district court of Worcester [Worcester],
the first district court of northern Worcester [Athol and Gardner],
the first district court of southern Worcester [Southbridge and Webster].

A vacancy in any of the above named district courts shall be filled only by appointment of a justice to the county court of the county in which the vacancy shall occur. In the county of Suffolk no such appointment to a vacancy shall be made which makes more than fifteen full-time justices in all in the district municipal and county courts in said county combined.

Section 6A. The first and second district courts of Barnstable, the district court of Dukes County, and the district court of Nantucket, shall each consist of one justice and one special justice. Vacancies in the offices of justices and special justices of such courts shall be filled by appointment. There shall be two justices in the central district court of Worcester, the district court of Springfield, the third district court of eastern Middlesex, and the municipal court of the Roxbury district. There shall be one justice in each other district court. In any district court in which there shall be more than one justice, the senior justice shall be the first justice of the court. Citations, orders of notice, writs, executions and all other processes issued by the clerk of the court shall bear the teste of the first justice thereof. No vacancies in the office of justice or special justice in any of the district courts other than in the counties of Barnstable, Dukes County and Nantucket shall be filled except as provided in section six of this chapter and section two of chapter two hundred eighteen A.

Special justices of the district courts other than the municipal court of the city of Boston shall be paid by the county in which they sit at the rate by the day at which special justices were to be paid in the same court on December thirty-first of the year nineteen hundred and fifty-two. Special justices of the Boston juvenile court shall be paid by the county fifteen dollars for each day's services, or at the rate by the day of the salary of the justice of the same court, whichever is the greater amount. For each day's service so paid for in excess of thirty days in any court in any one year, there shall be deducted by the county treasurer from the salary of the justice who absents himself from said court one day's compensation at the rate by the day of the salary of said justice, except for services of the special justice in holding simultaneous sessions;

* [Courts now full time.]

provided, however, that if a justice is absent, due to his illness or physical disability, for a period not exceeding thirty days in any year, in addition to said thirty days, he shall be deemed to be on sick leave and no such deduction shall be made; such thirty-day sick leave or any portion thereof not used in any year may be accumulated, but shall in any event not exceed ninety days in any consecutive three-year period.

SECTION 3. Section 8 of said chapter 218, as most recently amended by chapter 282 of the acts of 1936, is hereby further amended by adding at the end the following sentence:— Other than justices, all officials and employees in the district courts in Suffolk county shall perform in any of said courts such duties, in addition to those imposed upon them by law, as may be determined by rule, or standing or special order, by a majority of the justices of all the district and county courts in Suffolk county sitting jointly.

SECTION 4. Said chapter 218 is hereby further amended by striking out section 15, as most recently amended by section 1 of chapter 460 of the acts of 1947, and inserting in place thereof the following section:—

Section 15. The justices of the district courts, other than the district courts in the county of Suffolk, with the approval in each instance of the administrative committee of the district courts, and the justices of the district courts in the county of Suffolk in their sole discretion, shall prescribe the times for holding civil and criminal trials in their respective courts except where such times are established by law, and the hours when their respective courts shall open for the transaction of business, and shall also prescribe reasonable daily office hours for the clerks of their respective courts, during which hours the offices of such clerks shall be open, and may authorize such clerks to operate their offices on Saturdays with reduced personnel. Such hours shall be fixed with reference to the business of said courts and the convenience of the public and of attorneys, and notice thereof shall be posted in a conspicuous place in the offices of the respective clerks. Clerks shall also keep their offices open whenever the court so orders.

Where a full-time justice of a district or county court is assigned to another court by the administrative committee of the district courts to hear and determine any civil cases, said full-time justice shall, with the approval in each instance of the administrative committee, prescribe the times for holding such civil trials in said other court except where such times are established by law.

In case said administrative committee and the justice of any district or county court, other than the district courts in the county of Suffolk, do not agree upon any such times or hour or hours, said administrative committee, after a hearing, due notice whereof shall have been given, may by its order establish such times or hour or hours, and such order shall be binding upon said court and the clerk

thereof as if the times or hour or hours thereby established had been originally prescribed by the justice thereof with the approval of said administrative committee.

SECTION 5. Section 21 of said chapter 218, as appearing in the Tercentenary Edition, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:— The justices or a majority of them of all the district and county courts, other than the courts in the county of Suffolk, shall make uniform rules applicable to said courts, and the justices of the district and county courts in the county of Suffolk shall make rules applicable to those courts, providing for a simple, informal and inexpensive procedure, hereinafter called the procedure, for the determination, according to the rules of substantive law, of claims in the nature of contract or tort, other than slander and libel, in which the plaintiff does not claim as debt or damages more than fifty dollars, and for a review of judgments upon such claims when justice so requires.

SECTION 6. Section 36 of said chapter 218, as so appearing, is hereby amended by adding at the end the following sentence:— A justice of the peace not designated and commissioned as a trial justice shall not have or exercise any judicial power, and shall not receive complaints or issue warrants, except as provided in this section and in chapter two hundred and thirty-three.

SECTION 7. Said chapter 218 is hereby further amended by inserting after section 39, as so appearing, the following section:—

Section 39A. Justices of district courts within the county of Suffolk may perform each other's duties when designated by the chief justice, or in case of his absence or inability, the senior associate justice present, of the municipal court of the city of Boston, and when so designated they shall perform such duties at such times and places within said county as such chief justice may direct.

SECTION 8. Said chapter 218 is hereby further amended by striking out section 40, as most recently amended by section 1 of chapter 398 of the acts of 1948, and inserting in place thereof the following two sections:—

Section 40. District courts, except the municipal court of the city of Boston, shall be held by the respective justices thereof; and, upon request of the justice, either special justice may hold the court and have and exercise all the powers and duties of the justice or hold a second or third session thereof, and two or more simultaneous sessions may be held. In case of illness, absence or other disability on the part of the justice, the special justice holding the senior commission shall, if no request has been made as aforesaid, have and exercise all the powers and duties of the justice. In case of a vacancy in the office of justice, the special justice holding the senior

commission shall, if no request has been made as aforesaid, have and exercise all the powers and duties of the justice until such time as a justice may be designated by the administrative committee under section forty A. Upon the death, resignation, absence or disability of the justice and special justices of a district court, except the municipal court of the city of Boston, a justice or special justice of any other district court, at the request of the clerk, may for the time being, have and exercise all the powers and duties of the justice until such time as a justice may be designated by the administrative committee under section forty A.

Justices of district courts, except the municipal court of the city of Boston, may perform each other's duties when necessary or convenient, and special justices of district courts, including the municipal court of the city of Boston, may perform each other's duties when necessary or convenient, provided that no special justice of a district court other than of the municipal court of the city of Boston shall sit in said municipal court except upon the request of the chief justice thereof. When a special justice holds the court or a session thereof or an inquest, or certifies a bill of costs to a county, city or town treasurer, that fact, and the fact which gave him jurisdiction, shall be entered upon the general records of the court, but need not be stated in the record of any case heard by him.

Notwithstanding any other provision of this section, no civil cases other than supplementary proceedings, small claims, and proceedings relating to juveniles and insane persons shall be heard by any justice other than a full-time justice, or a special justice who does not directly or indirectly engage in the practice of the law and who is designated by the administrative committee of the district courts to sit on request on such cases in specified courts; but the administrative committee shall have power to waive this requirement for limited periods in specified district courts where the public convenience so requires.

Section 40A. Whenever a vacancy in the office of justice of a district court outside the county of Suffolk shall exist which is not to be filled under sections six and six A of this chapter and section two of chapter two hundred eighteen A, the administrative committee of the district courts shall designate a justice who is full-time under section six or a justice of the county court to have and exercise all the powers and duties of a justice of such district court. Such designation shall not prevent the counting of the salary of the former incumbent of the district court in determining when a justice of a county court is to be appointed under section two of chapter two hundred eighteen A.

SECTION 9. Section 43 of said chapter 218, amended by section 3 of chapter 347 of the acts of 1939, is hereby amended by striking out, in line 3, the words "except the municipal court of the city of Boston," and inserting in place thereof the words:— other than the district courts in the county of Suffolk, — so as to read as follows:

Section 43. The justices, or a majority of them, of all the district courts, other than the district courts in the county of Suffolk, shall from time to time make and promulgate uniform rules regulating the time for the entry of writs, processes and appearances, the filing of answers in civil actions, the preparation and submission of reports, the allowance of reports which a justice shall disallow as not conformable to the facts, or shall fail to allow by reason of physical or mental disability, death or resignation, the reporting of cases reserved for report when a justice shall fail to report the same by reason of physical or mental disability, death or resignation, the granting of new trials, and the practice and manner of conducting business in cases which are not expressly provided for by law, including juvenile proceedings and those relating to wayward, delinquent and neglected children.

SECTION 10. The first paragraph of section 43A of said chapter 218, as most recently amended by chapter 101 of the acts of 1943, is hereby amended by striking out, in lines 2 and 3, 8 and 9, 13 and 14, and 33 and 34, the words "other than the municipal court of the city of Boston" and inserting in place thereof in each instance the words:— other than the district courts in the county of Suffolk — and by inserting after the word "district" in line 4, the words:— or county — so to read as follows:—

Section 43A. There shall be an adminstrative committee of the district courts, other than the district courts in the county of Suffolk, which shall consist of five justices of such district and county courts, appointed by the chief justice of the supreme judicial court, each for a period not exceeding two years as said chief justice may determine. Any such justice may be reappointed. The committee shall be authorized to visit any district court, other than the district courts in the county of Suffolk, or any trial justice, as a committee or by sub-committee, to require uniform practices, to prescribe forms of blanks and records, and to superintend the keeping of records by clerks and by trial justices. The committee shall have general superintendence of all the district courts, other than the district courts in the county of Suffolk, and their clerks and other officers; but, except as otherwise provided by law, shall have no power to appoint any such officers. The committee may regulate the assignment of special justices in such district courts, determine the number of simultaneous sessions which may be held by any such district court, the sittings of special justices, and, subject to the provisions of section fifteen, shall determine the times for holding criminal and civil sessions. Without limiting the generality of the foregoing, the committee shall require records to be kept which shall be available to the general court and which shall show the hours of opening and adjourning of court and any simultaneous session thereof on each day, the names of the justices and special justices holding court or a simultaneous session thereof, and any other information which may generally assist in the determination of the

nature and volume of, and the time required to complete, all work done by any of such district courts. The committee shall have power to prohibit the practice of motor vehicle tort cases, so called, by the justices of the district courts, other than the district courts in the county of Suffolk.

SECTION 11. The second paragraph of section 43A of said chapter 218, as amended by section 1 of chapter 682 of the acts of 1941, is hereby further amended by striking out the words "other than the municipal court of the city of Boston," in lines 2 and 3, and by inserting in place thereof the words:—other than the district courts in the county of Suffolk, — so as to read as follows:—

In the case of the refusal or failure of any justice or special justice, clerk or officer of any district court, other than the district courts in the county of Suffolk, to comply with any order of the committee in performance of its duties and powers by this section established, the committee shall report such person or persons to the chief justice of the supreme judicial court with a statement of such non-compliance, and, upon a finding, made after a hearing by said chief justice or any justice of the supreme judicial court to whom said chief justice my refer the matter, that such person has not complied with such order of the committee, the supreme judicial court shall forthwith make an appropriate order as to the matter involved.

SECTION 12. Said chapter 218 is hereby further amended by striking out section 50, as appearing in the Tercentenary Edition, and inserting in place thereof, the following section:—

Section 50. The municipal court of the city of Boston shall consist of one chief justice and eight associate justices. The chief justice and associate justices of said court and the justices of the other district and county courts in Suffolk county sitting jointly shall, from time to time, make rules for regulating the practice and conducting the business in all the district courts in Suffolk county in all cases not expressly provided for by law, and including therein the rules for all said courts in Suffolk county under section twenty-one of this chapter, and for the transfer from one court to another and hearing and disposition of cases in said courts, for the duties of the clerical forces and other court officials or employees in any of said courts with a view to adjusting the judicial and clerical force in said courts to the needs of the work in all said courts in the most effective and economical way in the public interest, and for the fixing of the place of issue and return of process.

Said justices shall also make rules for the business of the Suffolk county appellate division district under section one hundred eight of chapter two hundred thirty-one as amended, and shall perform the functions for all of said courts in Suffolk county, which under sections fifteen and forty-three of this chapter as amended are to be performed for the other district courts. Wherever it is provided

in this act that action shall be by the justices sitting jointly such action may be taken by a majority.

SECTION 13. Section 51 of said chapter 218, as so appearing, is hereby amended by adding at the end the following sentence:—

Said chief justice, or senior associate justice present, shall preside at the joint meetings of the justices of the district and county courts in Suffolk county, shall approve and certify all bills in all of said courts, shall assign justices and direct the use of special justices in all of said courts, require reports from all subordinate officials and make all budget estimates.

SECTION 14. Section 77 of said chapter 218, as most recently amended by section 1 of chapter 768 of the acts of 1951, is hereby further amended by striking out the last sentence.

SECTION 15. Said chapter 218 is hereby further amended by striking out section 77A, as most recently amended by section 1 of chapter 603 of the acts of 1952, and inserting in place thereof the following section:—

Section 77A. The salaries of the full-time justices of the district courts listed in section six shall be twelve thousand dollars each. Such justices shall devote their entire time during ordinary business hours to their respective duties and shall not, directly or indirectly, engage in the practice of law. Each of said justices shall sit in his own court. In addition, each of said justices of a district court outside the county of Suffolk shall perform such other duties as district court justice as the administrative committee of the district courts shall assign to him, including sitting on all or specified types of cases in any other district court, or courts, and more especially sitting on civil cases except supplementary proceedings, small claims, and proceedings relating to juveniles and insane persons in other district courts wherein the presiding justice is not full time under section six.

SECTION 16. Said chapter 218 is hereby further amended by striking out section 78, as most recently amended by section 2 of chapter 603 of the acts of 1952, and inserting in place thereof the following section:—

Section 78. The salary of the justice of the first district court of Essex shall be seventy-two hundred and forty-five dollars; the salary of the justice of each of the following district courts shall be six thousand dollars: fourth district court of eastern Middlesex, central district court of northern Essex; the salary of the justice of each of the following district courts shall be fifty-four hundred dollars: second district court of Plymouth, first district court of southern Middlesex, district court of Fitchburg, first district court of Bristol; the salary of the justice of each of the following district courts shall be forty-eight hundred dollars: fourth district court of Bristol, district court of Newburyport, district court of western Norfolk, district court of Chicopee, district court of central Middle-

sex; the salary of the justice of each of the following district courts shall be forty-two hundred dollars: first district court of Barnstable, fourth district court of Plymouth, district court of western Hampden, district court of Marlborough, third district court of Plymouth; the salary of the justice of each of the following district courts shall be thirty-eight hundred and forty dollars: first district court of northern Middlesex, district court of Leominster, district court of northern Berkshire, district court of Natick, district court of southern Norfolk, district court of western Worcester, third district court of southern Worcester, district court of eastern Hampden, second district court of eastern Worcester, second district court of Essex, second district court of southern Worcester, fourth district court of Berkshire, first district court of eastern Worcester, district court of eastern Hampshire; the salary of the justice of each of the following district courts shall be three thousand dollars: second district court of Barnstable, district court of Lee, third district court of Essex, district court of Winchendon, district court of eastern Franklin, district court of Williamstown; the salary of the justice of the district court of southern Berkshire shall be thirty-eight hundred and forty dollars; the salary of the justice of the district court of Peabody shall be four thousand dollars.

SECTION 17. Said chapter 218 is hereby further amended by striking out sections 79 and 80.

SECTION 18. Section 81 of said chapter 218, as amended by section 1 of chapter 296 of the acts of 1939, is hereby further amended by adding at the end of the first sentence the following words:—

and provided further, that the full-time district court justices and the county court justices shall annually receive from their respective counties, upon the certificate of the administrative committee, the amount of the expense incurred by them in the discharge of their duties.

SECTION 19. Said chapter 218 is hereby further amended by striking out section 82.

SECTION 20. The General Laws are hereby further amended by inserting after chapter 218 the following chapter:—

CHAPTER 218A

County Courts

Section 1. Courts to be known as county courts are hereby established in each county other than Barnstable, Dukes County and Nantucket. Justices shall be appointed to these courts only as provided in section two of this chapter and section six of chapter two hundred eighteen. County courts shall have orginal jurisdiction of civil actions and criminal offenses concurrent with the district courts. So long as district courts shall continue to exist in a county, all cases cognizable in the county court of such county shall be brought in the appropriate district court, as now or hereafter

provided by law. The jurisdictional limits of each county court shall be coterminous with its respective county. Sittings shall be held as public convenience may require at the places where the present district courts now hold sittings.

Section 2. There shall be one county court justice each in the counties of Franklin and Hampshire; two each in the counties of Berkshire and Plymouth; three each in the counties of Bristol and Essex; four in the county of Norfolk; five each in the counties of Hampden and Worcester; eleven in the county of Middlesex; and fifteen in the county of Suffolk. Vacancies in the office of county justice in any county shall be filled only as provided in section six of chapter two hundred eighteen and in this section. Whenever the Administrative Committee shall certify to the governor that vacancies exist in enough of the district courts not designated as full-time under section six of chapter two hundred eighteen so that the salaries of the justices in such vacancies total at least twelve thousand dollars, and shall certify the county where in its opinion the greatest need for appointment of a justice exists, in which the number of full-time district court justices and county court justices combined is less than the permissible number of county court justices under this section, a vacancy shall exist in such county for the appointment of a county court justice under section six of chapter two hundred eighteen. Additional appointments of county justices may similarly be made under this section whenever an additional twelve thousand dollars of such vacancies shall exist. Notwithstanding the provisions of this section, one county court justice shall be appointed forthwith to the county court of Middlesex County, and a vacancy in the office of any county court justice created by the death, retirement, resignation or removal of a county court justice shall be filled.

Section 3. The salaries of the justices of the county courts appointed under section two of this chapter and section six of chapter two hundred eighteen shall be twelve thousand dollars each. Such justices shall devote their entire time during ordinary business hours to their respective duties and shall not, directly or indirectly, engage in the practice of law. Each of said justices of a county court outside the county of Suffolk shall perform such duties as district court justice as the administrative committee of the district courts shall assign to him, including sitting on all or specified types of cases in any district court or courts, and more especially sitting on civil cases except supplementary proceedings, small claims, and proceedings relative to juveniles and insane persons in district courts wherein the presiding justice is not full-time under section six of chapter two hundred eighteen, and each of said justices shall have and exercise all the powers and duties which a district court justice has and may exercise in the administration of such courts and in the trial and disposition of such cases.

Each of said justices shall also be eligible, at the written request

of the chief justice of the superior court, to sit in the superior court under sections fourteen B, fourteen C, fourteen D and fourteen E of chapter two hundred twelve in the same manner as a justice of the district court, and shall have and exercise all the powers and duties which a justice of the superior court has and may exercise in the trial and disposition of such cases.

Section 4. In the event of a vacancy in the office of chief justice of the municipal court of the city of Boston, the governor with the advice and consent of the council may appoint one of the associate justices as chief justice thereof; or may, if such vacancy is to be filled under section six of chapter two hundred eighteen by the appointment of a justice of the Suffolk county court, appoint such county justice as chief justice of the Suffolk county court who shall have and exercise all the powers of a chief justice of the municipal court of the city of Boston.

SECTION 21. No further trial justices shall be appointed under chapter 219 of the General Laws after the effective date of this act.

SECTION 22. Section 108 of chapter 231 of the General Laws, as most recently amended by chapter 683 of the acts of 1949, is hereby further amended by striking out the first paragraph, as appearing in the Tercentenary Edition, and inserting in place thereof the following paragraph:—

Section 108. There shall be an appellate division of each district court for the rehearing of matters of law arising in civil causes therein. The Suffolk county appellate division shall consist of three district and county justices thereof, to be designated from time to time by the chief justice of the municipal court of the city of Boston. The appellate division of each other district court shall be holden by justices of such other district and county courts, not exceeding three in number out of five justices assigned to the performance of such duty by the chief justice of the supreme judicial court, as follows:—Such last mentioned chief justice shall assign five justices of district and county courts within the counties of Essex and Middlesex to act in the appellate divisions of such district courts within those counties which shall be known as the northern appellate division district; shall assign five justices of district and county courts within the counties of Norfolk, Plymouth, Barnstable, Bristol, Dukes and Nantucket to act in the appellate divisions of such district courts within those counties which shall be known as the southern appellate division district; and shall assign five justices of district and county courts within the counties of Worcester, Franklin, Hampshire, Hampden and Berkshire to act in the appellate divisions of district courts within those counties, which shall be known as the western appellate division district. Such assignment may be made for such period of time as such chief justice may deem advisable. In each of the foregoing three districts one of the justices so assigned shall be designated by the chief justice of the supreme judicial court as presiding justice, who shall from time to time designate those of the

appellate justices who shall act on appeals in each district court in that district and direct the times and places of sittings. Two justices shall constitute a quorum to decide all matters in an appellate division.

SECTION 23. Section 108 of said chapter 231, as most recently amended by chapter 683 of the acts of 1949, is hereby further amended by striking out the last sentence.

SECTION 24. Section 65A of chapter 32 of the General Laws, most recently amended by chapter 775 of the acts of 1951, is hereby amended by inserting after the word "Boston," in line 6 as appearing in section 5 of chapter 451 of the acts of 1939, the words:—a justice of a county court,—so that the first sentence shall read as follows:—

A chief justice or any associate justice of the supreme judicial court, the superior court or the municipal court of the city of Boston, any judge or associate judge of the land court, any judge of probate and insolvency, a justice of any district court other than the municipal court of the city of Boston, a justice of a county court, or a justice of the Boston juvenile court, who shall be retired under article LVIII of the amendments to the constitution, or who, after having served as a chief justice, justice, associate justice, judge or associate judge of any such court or courts at least ten years continuously and having attained the age of seventy years, shall resign his office, shall thereupon be entitled to receive a pension for life at an annual rate equal to three-fourths of the annual rate of salary payable to him at the time of such retirement or resignation, to be paid from the same source and in the same manner as the salaries of like judicial officers of his court are paid.

SECTION 25. Section 65B of said chapter 32, as most recently amended by chapter 398 of the acts of 1943, is hereby further amended by inserting after the word "resignation" in line 10 the words:—or during the period of ten years next preceding December thirty-first of the year nineteen hundred and fifty-two—.

SECTION 26. Section 49 of chapter 35 of the General Laws, as most recently amended by section 2 of chapter 611 of the acts of 1951, is hereby further amended by inserting after the word "courts" in line 8, the words:—other than the clerks and assistant clerks of district courts except the municipal court of the city of Boston,—and by striking out, in lines 17 to 21, the words "clerks and assistant clerks of the district courts other than the clerks and assistant clerks of district courts in the county of Suffolk except the municipal court of the city of Boston, and other than the clerks and assistant clerks of the central district court of Worcester," so as to read as follows:—

Section 49. Certain Offices, etc., to Be Classified by Board; "Salary" Defined.—Every office and position whereof the salary is wholly payable from the treasury of one or more counties, or from funds administered by and through county officials, excluding the offices of county commissioners, the clerk and the assistant clerks of the

superior court for civil business in the county of Suffolk, the clerk and assistant clerks of the superior court for criminal business in the county of Suffolk, clerks and assistant clerks of the courts other than the clerks and assistant clerks of district courts except the municipal court of the city of Boston, the assistant clerk and second assistant clerk of the supreme judicial court for the county of Suffolk, the register of deeds and the assistant registers of deeds for the county of Suffolk, official stenographers, additional stenographers and temporary stenographers of the superior court in the county of Suffolk, justices and special justices of the district courts, the messenger of the superior court in the county of Suffolk, the secretary and assistant secretary of the municipal court of the city of Boston, and excluding trial justices, other offices and positions filled by appointment of the governor with the advice and consent of the council, court officers appointed in Suffolk county under section seventy of chapter two hundred and twenty-one, court officers in attendance upon the municipal court of the city of Boston, court officers in attendance upon the probate court in the county of Essex, and probation officers, but including the officer described in the first sentence of section seventy-six of said chapter two hundred and twenty-one, shall be classified by the board in the manner provided by sections forty-eight to fifty-six, inclusive, and every such office and position, now existing or hereafter established, shall be allocated by the board to its proper place in such classification. Offices and positions in the service of any department, board, school or hospital principally supported by the funds of the county or counties, or in the service of a hospital district established under sections seventy-eight to ninety-one, inclusive, of chapter one hundred and eleven, shall likewise be subject to classification as aforesaid. The word "salary", as used in this section, shall include compensation, however payable; but nothing in sections forty-eight to fifty-six, inclusive, and nothing done under authority thereof, shall prevent any person from continuing to receive from a county such compensation as is fixed under authority of other provisions of law or as is expressly established by law.

SECTION 27. Notwithstanding any other provisions of law, the salary in force on December 31, 1952 of each of the clerks and assistant clerks of district courts who are, by the previous section of this act, first made subject to the provisions of section 49 of chapter 35 of the General Laws, shall continue in force until his office or position is classified as provided in said section 49, and shall not be reduced by such classification as long as he shall hold such office or position.

SECTION 28. This act shall take effect on October 1, 1953, except that the provisions contained in section 2 of this act limiting the filling of vacancies in certain district courts shall take effect on the thirtieth day next after the earliest day on which it has the force of a law conformably to the constitution.

Public Document

No. 144

TWENTY-EIGHTH REPORT

Judicial Council of Massachusetts For 1952

CONTENTS OF THIS REPORT

(Contents Continued on Page 2)

THE INDEX OF THE REPORTS AND LIST OF STATUTES PASSED ON RECOMMENDATION OF THE JUDICATURE COMMISSION AND OF THE JUDICIAL COUNCIL SINCE 1919.

For the convenience of the legislature and the courts and practicing lawyers we call attention to the fact that we annexed to our 27th report, in 1951, an alphabetical, and chronological, index to the contents of these reports since 1919, with an introductory statement, and also an index of the circular letters of the Administrative Committee of the District Courts.

Preceding the index is an annotated list of about 150 statutes passed on recommendation of the Judicature Commission and of the Judicial Council since 1919, with references to the reports where the reasons for each statute may be found.

In view of the current proposals for shortening legislative sessions by eliminating waste motion, the index and list of statutes should prove helpful to members of the legislature and its committees as it will show where the subject matter of many bills, including some "hardy perennials," have been discussed by the Judicial Council and reasons stated why they should, or should not, be enacted. References to such discussions may save time at committee hearings.

The Commonwealth of Massachusetts

DECEMBER, 1952

To HIS EXCELLENCY, PAUL A. DEVER
Governor of Massachusetts

In accordance with the provisions of section 34B of chapter 221 of the General Laws (Ter. Ed.) we have the honor to transmit the twenty-eighth annual report of the Judicial Council for the year 1952.

FRANK J. DONAHUE, *Chairman,*
FREDERIC J. MULDOON, *Vice-Chairman,*
LOUIS S. COX,
JOHN E. FENTON,
JOHN C. LEGGAT,
DAVIS B. KENISTON,
FRANK L. RILEY,
CHARLES W. BARTLETT,
JOSEPH GOLDBERG,
EDWARD O. PROCTOR.

ACTS OF 1924, CHAPTER 244

As amended by St. 1927, c. 923, St. 1930, c. 142, and St. 1947, c. 601
Now appearing as G. L. (Ter. Ed.) Ch. 221, §§ 34A-34C

AN ACT PROVIDING FOR THE ESTABLISHMENT OF A JUDICIAL COUNCIL TO MAKE A CONTINUOUS STUDY OF THE ORGANIZATION, PROCEDURE AND PRACTICE OF THE COURTS.

Be it enacted, etc., as follows:

Chapter two hundred and twenty-one of the General Laws is hereby amended by inserting after section thirty-four, under the heading "Judicial Council," the following three new sections—*Section 34A.* There shall be a Judicial council for the continuous study of the organization, rules and methods of procedure and practice of the judicial system of the commonwealth, the work accomplished, and the results produced by that system and its various parts. Said council shall be composed of the chief justice of the supreme judicial court or some other justice or former justice of that court appointed from time to time by him; the chief justice of the superior court or some other justice or former justice of that court appointed from time to time by him; the judge of the land court or some other judge or former judge of that court appointed from time to time by him; the chief justice of the municipal court of the city of Boston or some other justice or former justice of that court appointed from time to time by him; one judge of a probate court in the commonwealth and one justice of a district court in the commonwealth and not more than four members of the bar all to be appointed by the governor, with the advice and consent of the executive council. The appointments by the governor shall be for such periods, not exceeding four years, as he shall determine.

Section 34B. The Judicial council shall report annually on or before December first to the governor upon the work of the various branches of the judicial system. Said council may also from time to time submit for the consideration of the justices of the various courts such suggestions in regard to rules of practice and procedure as it may deem advisable.

Section 34C. No member of said council, except as hereinafter provided, shall receive any compensation for his services, but said council and the several members thereof shall be allowed from the state treasury out of any appropriation made for the purpose such expenses for clerical and other services, travel and incidentals as the governor and council shall approve. The secretary of said council, whether or not a member thereof, shall receive from the commonwealth a salary of five thousand dollars.

MEMBERS OF THE COUNCIL

FRANK J. DONAHUE of Boston, *Chairman*
FREDERIC J. MULDOON of Winthrop

LOUIS S. COX of Lawrence
JOHN E. FENTON of Lawrence
JOHN C. LEGGAT of Lowell
DAVIS B. KENISTON of Boston
FRANK L. RILEY of Worcester
CHARLES W. BARTLETT of Dedham
JOSEPH GOLDBERG of Hudson
EDWARD O. PROCTOR of Newton

FRANK W. GRINNELL, *Secretary*, 60 State St., Boston

TWENTY-EIGHTH REPORT OF THE JUDICIAL COUNCIL OF MASSACHUSETTS

To His Excellency

PAUL A. DEVER

Governor of Massachusetts

The Judicial Council was created by St. 1924, Chapter 244 (*See copy printed on opposite page*), "for the continuous study of the organization, rules and methods of procedure and practice of the judicial system of the Commonwealth, the work accomplished and the results produced by that system and its various parts."*

Since our last report Hon. Wilfred A. Paquet, former Vice-Chairman, resigned from the Council after his appointment as an associate justice of the Superior Court.

Edward O. Proctor of Newton was appointed by Your Excellency as a member of the Council. Frederic J. Muldoon of Winthrop was chosen by the council as vice-chairman. Hon. John C. Leggat of Lowell, Hon. Frank L. Riley of Worcester and Mr. Muldoon were re-appointed by Your Excellency as members of the Council for four year terms.

RECOMMENDATIONS ADOPTED IN 1952

During the last session the legislature adopted the following recommendations of the Council in our 27th report.

Chapter 352 eliminating the requirement of assent to an adoption by an absconding father who has failed to contribute to the support of the child. A bill was recommended by the Council in its 27th report (pp. 19-21). No action was taken on this recommendation, but a bill H. 1783 was adopted as chapter 352 which accomplishes part of the purpose of the Council's recommendation. See discussion in this report p. 37 with recommendation for further amendment.

Chapter 476 relative to proof of a public way. See 27th report, p. 33.

Chapter 460 relative to consolidation of actions for trial in district courts. See 27th report, pp. 33-34.

Chapter 533 relative to burden of proof of contributory negligence in cases of consequental damages. See 27th report, pp. 31,

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* In 1925, the legislature also submitted the following request to the council.

1925 RESOLVES, CHAPTER 27

"Resolved, That the judicial council is hereby requested to investigate ways and means for expediting the trial of cases and relieving congestion in the dockets of the Superior Court, and among other things . . . ways and means for encouraging, so far as consistent with constitutional rights, trials without jury . . . and any other ways and means that may appear feasible to said council for improving and modernizing court procedure and practice so that, consistently with the ends of justice, the proverbial delays of the law and attendant expense, both to litigants and the general public, may be minimized. (Approved April 24, 1925.)"

32. The bill submitted by the Council was passed by both houses and returned. Another bill was passed, as Chapter 533, which takes effect January 1, 1953.

Three other bills H. 2503, 2504 and 2505 containing recommendations of the Council were favorably reported by the Judiciary Committee, but failed of passage.

Reports Requested by the Legislature in 1952

This year the subject matter of the following 17 bills was referred to the Council with a request for a report.

Senate 199 (of 1951) as to Withdrawal of Pleas of Guilty (referred by resolves of 1951, chapter 85).

House 166 as to Defences in Actions for False Arrest or Imprisonment (referred by resolves, chapter 35).

House 321 as to Public Administrators (referred by resolves, chapter 22).

House 873 relative to Registration of Motor Cars of Minors (referred by resolves, chapter 24).

House 1768 relative to Enforcement of Foreign Alimony Decrees (referred by resolves, chapter 18).

House 447 relative to Establishment of a Court of Claims and a General Waiver by the Commonwealth of Immunity from Suit (referred by resolves, chapter 15).

Senate 174 relative to Derivative Actions against Corporations, their Officers and Directors (referred by resolves, chapter 26).

House 1520 relative to Drafting Documents Involving Real Property (referred by resolves, chapter 16).

House 959 as to Recording of Deeds referring to a Plan (referred by resolves, chapter 45).

House 1509 relative to the Uniform Enforcement of Foreign Judgments (referred by resolves, chapter 27).

House 1772 relative to the Meaning of the Words "Blood Issue" in Wills (referred by resolves, chapter 23).

House 1781 relative to Trusts (referred by resolves, chapter 5).

House 1754 relative to Perjury (referred by resolves, chapter 34).

House 663 relative to Negotiable Instruments (referred by resolves, chapter 29).

Senate 315 and House 925 relative to Payments under the Workmen's Compensation Act (referred by resolves, chapter 54).

House 558 relative to Interest in Workmen's Compensation cases (referred by resolves, chapter 13).

We discuss these matters in this report.

CONGESTION IN THE SUPERIOR COURT

During the past year there was much discussion of congestion in the superior court. It was suggested that it was greater than ever before and the remedy proposed was to increase the number of justices from the present 32 to 36.

Within a few months after the creation of the Judicial Council at the end of 1924, the legislature adopted chapter 27 of the Resolves of 1925 as follows:

> "Resolved, That the judicial council is hereby requested to investigate ways and means for expediting the trial of cases and relieving congestion in the dockets of the Superior Court, and among other things . . . ways and means for encouraging, so far as consistent with constitutional rights, trials without jury . . . and any other ways and means that may appear feasible to said council for improving and modernizing court procedure and practice so that, consistently with the ends of justice, the proverbial delays of the law and attendant expense, both to litigants and the general public, may be minimized. (Approved April 24, 1925)."

The subject of congestion has been repeatedly discussed since then in the reports of the Judicial Council as well as in various legal periodicals and legislative committee reports. The most extended studies were in 1932 and 1933 and will be found in the 8th report 8-37 and 9th report 11-35.

In connection with the suggestions during the past year that the congestion was worse than ever before and jury trials were about 4 years behind in certain counties, we call attention to the statement of the Council in 1933 on p. 16 of its 9th report.

> "The Superior Court, in the counties which have the great bulk of litigation to carry, is nearly four years behind in its jury trial work."

During the war the accumulation of entries decreased from 27,620 in 1941 to 15,414 in 1944 and 16,722 in 1945. Since then it increased to 31,587 entries in 1952, but it is still about 8,318 less than in 1930 as shown by the table of entries below.

In order to get the problem of congestion in perspective it is necessary to look at the picture of what it was 20 years ago and what it is today, and what it has been in the years between. The 9th report contained tables of the civil and criminal cases entered and of the cases tried each year from 1924 to 1933. We reprint those figures and supplement them by other figures since 1933, compiled from the annual reports received from the Clerks of Court for the 14 counties and tabulated in the Appendix to each of our annual reports. For the present purpose of focussing atten-

tion on the nature of the problem, we call attention to the number of civil cases entered (shown by Table 2 in the annual appendix) the number tried (shown by Table 3) the number "finally disposed of" by settlement or otherwise, including those tried (shown by Table 6). We also show the number of criminal cases entered by indictment or appeal and the number tried from 1928 to 1952 (shown by annual table of such cases). For statistical index to other facts see p. 91.

CIVIL CASES OF ALL KINDS (INCLUDING REMOVALS FROM DISTRICT COURTS) ENTERED IN THE SUPERIOR COURT FROM 1924 TO 1952, AND CASES OF ALL KINDS "FINALLY DISPOSED OF" (INCLUDING CASES TRIED) FROM 1929 TO 1952—THE YEARS FOR WHICH THE FIGURES ARE AVAILABLE IN THE REPORTS OF THE JUDICIAL COUNCIL.

Total Entries of All Kinds Including Removals 1924-1952 *(See Annual Table 2)*		Total "Finally Disposed of" 1929-1952 *(See Annual Table 6)*	
1924	26,606	1929	24,127
1925	26,915	1930	43,889
1926	28,725	1931	38,887
1927	36,412	1932	37,431
1928	37,032	1933	35,742
1929	39,028	1934	35,598
1930	39,905	1935	27,815
1931	37,956	1936	34,307
1932	32,190	1937	35,192
1933	32,210	1939	33,352
1934	28,787	1940	30,455
1935	25,022	1941	27,780
1936	24,381	1942	27,046
1937	26,888	1943	22,960
1939	28,741	1944	19,792
1940	26,005	1945	19,833
1941	27,620	1946	23,206
1942	26,622	1947	20,982
1943	17,759	1948	23,145
1944	15,414	1949	23,832
1945	16,722	1950	25,979
1946	20,363	1951	25,614
1947	26,171	1952	27,990
1948	28,840		
1949	29,955		
1950	30,115		
1951	30,056		
1952	31,587		

Note: The figures for 1938 are omitted as the table is not clear.

CIVIL CASES TRIED EACH YEAR BY THE SUPERIOR COURT AS SHOWN BY THE RETURNS OF THE CLERKS OF COURT FOR ALL COUNTIES. (See Annual Table 3)

1924—1952

Year Ending June 30	Jury Trials	Trials Without Jury	Equity Cases	Divorce Nullity	Total Trials
1924	2594	563	475	1571	5203
1925	3022	514	562	707	4805
1926	2735	668	683		
1927	2857	696	601	452	4606
1928	2672	669	679	402	4422
1929	2517	490	536	285	3828
1930	2684	617	632	271	4204
1931	2533	808	510	122	3973
1932	2505	725	605	92	3927
1933	2080	1309	606	63	4058
1934	2131	1022	586	65	3805
1935	2360	817	655	62	3894
1936	2595	1110	554	21	4280
1937	2880	757	526	17	4180
1938	2842	721	629	2	4194
1939	2825	603	444	7	3879
1940	2647	642	451	4	3744
1941	2701	542	508	10	3761
1942	2594	430	408	23	3455
1943	2672	401	344	21	3438
1944	2316	271	334	29	2950
1945	2002	657	335	40	3032
1946	2354	297	468	57	3176
1947	2290	324	500	40	3154
1948	2395	402	480	50	3327
1949	2174	407	623	67	3271
1950	2549	442	687	50	3728
1951	2190	473	548	55	3266
1952	2062	389	716	80	3247

CRIMINAL BUSINESS

1928—1952

	Indictments	Appeals from District Courts	Criminal Trials
1928	4,005	10,455	2,192
1929	4,054	11,926	2,553
1930	4,532	9,559	2,521
1931	5,525	9,901	3,308
1932	6,519	10,421	3,371
1933	6,090	9,324	3,427

CRIMINAL BUSINESS—*Continued*

	Indictments	Appeals from District Courts	Criminal Trials
1934	5,203	10,742	3,537
1935	5,217	9,924	3,279
1936	4,420	7,846	2,777
1937	4,243	7,124	2,510
1938	4,121	7,163	2,502
1939	4,074	7,233	2,674
1940	4,616	6,682	2,626
1941	4,040	6,388	2,784
1942	4,316	6,740	2,371
1943	3,227	5,580	1,542
1944	3,664	4,477	1,679
1945	3,078	4,012	1,532
1946	3,927	4,726	1,821
1947	4,001	5,228	2,165
1948	4,190	5,354	1,942
1949	4,321	5,194	1,687
1950	4,577	5,973	1,955
1951	4,133	5,334	1,890

Making due allowance for possible occasional errors these figures, annually reported for more than 20 years by the responsible clerks of court in 14 counties, as directed by the legislature, show that the statements that the congestion is greater today than ever before are mistaken. It was noticeably worse 20 years ago.

They show the increase in entries following the compulsory car insurance law in 1925. They support the statement of the Council in the 8th report (pp. 11-12) that

> "If all the jury cases 'awaiting trial' were to be tried, it would take the present force of judges twenty years to try them. If we doubled the number of judges, it would take about 10 years, and in the meantime the new cases would be coming in at the rate of 30,000 a year. Of course, most of the cases are never tried, but how many are settled because of the long delay involved and the chances of witnesses dying or disappearing or forgetting or inventing the facts, no one can say.
>
> "The question arises whether the public in attempting to provide theoretical opportunities for obtaining justice is not in fact providing excessively dilatory machinery which defeats its own purpose at an enormous expense to the public."

The biggest fact that stands out from the figures is that congestion will never be cured, if large classes of cases are to remain in the courts as we believe they should remain, *until the congestion is attacked at its sources.* The Council has made a considerable number of suggestions for this purpose in the past twenty years or earlier, but most of them have been opposed by

lawyers. The problem is not confined to Massachusetts, it is nation-wide and, in some other states, they try experiments which have been effective. They are trying them now in New York where the accumulation of cases is as serious, if not more serious, than it is here. The attention of the public is being attracted to the problem in the press and otherwise as illustrated by the dramatized account of the Chicago courts (perhaps the most congested and dilatory in the country) in the issue of "Life" for November 10, 1952. The dispatch of business in the New Jersey courts during the past three years since the reorganization of their judicial system is gradually attracting attention throughout the country.*

Meanwhile the movement toward arbitration outside of courts is growing throughout the country and the movement for lifting all motor vehicles accidents out of the courts and transferring them to a board, as was done with industrial accidents about 40 years ago, is not dead, although the bar in general do not seem conscious of these facts. A bill for a commission instead of the District Courts for the original jurisdiction and a bill to repeal the compulsory insurance law and substitute a financial responsibility act like that in New York have already been filed as reported in the press.

At a recent dinner of the Suffolk Law School, the presiding justice of the First Dept. of the New York Supreme Court (which corresponds to our Superior Court) described their problems (very similar to ours) and the experimental steps that they were taking to meet them and keep legal business in the courts where it belongs instead of having it distributed to commissions. Some of these experiments have been recommended by the Judicial Council during the past twenty years or more. The Judicature Commission (of which the late Judge Sheldon was chairman) in its 2nd report in 1920 pointed out that gradual change was normal for an old community like Massachusetts. It is now 32 years since that report, and while some important recommendations were adopted, suggestions directed at the sources of congestion have been rejected. Since the address referred to, the substance of which was made to the bar in New York as well as here, the New York Bar Bulletin for October 1952 (p. 297) contains an article by another judge of the same court, in which he referred to the address as follows:

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* See article by Roscoe Pound in the Harvard Law Review for November 1952 and an article in the Journal of the American Judicature Society for October 1952 by Willard G. Woelper, the Administrative Director of the Courts of New Jersey.

> "He spoke as a friend of the bar, not as a critic. His recommendations were far sighted and well received and should be heeded. They unmistakably warn that, unless we act, unfriendly hands will attempt to provide speedier justice."

These words reflect the Council's approach to the problem, not only today, but twenty years ago, and of the Judicature Commission 32 years ago. We have, we hope, demonstrated, the problem, the need of dealing with its sources, and our belief that judicial business should stay in the courts if possible. What do we recommend?

In our last five reports we have recommended a fee of $15. for a claim for a full jury of 12, with a smaller fee of $5. for a jury of six (which requires agreement by both parties for constitutional reasons). That is a mild suggestion as compared with a cost of $25. adopted in New York 20 years or so ago (and followed by a large reduction in jury claims). In the 4th report of the Council (at p. 24) in 1928, Judge Proskauer was quoted as saying in an address as to the business in the New York courts,—

> To what a shocking level of inconsequentiality our litigation had fallen is evident from the experience following the legislation of last year (1927) increasing the cost of jury trial by $25. The enactment of this statute was followed by a reduction of 75% in the number of issues filed for jury trial.

We have pointed out that with jurors compensated at $8 a day the cost of jurors to the counties is rising one million annually. The public cost of a jury trial was estimated at from $400 to $500 a day after careful study by the late Addison Green, when chairman of the Judicial Council and the late Judge Corbett, also a member of the Council about 20 years ago. Today the cost is probably higher. Cases have been tried to juries within the past year involving $75. or so. In an article in the Boston University Law Review in April, 1931, quoted in our 23rd report (pp. 21-35) an experienced judge, then of the Superior Court, said

> "Confining ourselves solely to its civil business, and laying to one side the large sums raised by taxation and invested in court houses and the amounts expended annually for their care and upkeep, and take only the direct cost of judges, clerks, officers, jurors, masters and auditors, it can be said that this amounted in 1929 to over $1,700,000. As against this item the litigants paid into court for entry fees $110,000, leaving $1,590,000 as the partial burden of civil litigation in this court which was borne by all the people. In the year 1929, 37,032 civil actions of all sorts were entered in the Superior Court and it follows that 99.991% of our people who had not instituted litigation were called upon either directly or indirectly to help finance the .009% of our population who had . . .

"Judges, lawyers, and jurors know only too well that many cases are entered involving alleged disputes which well could be settled by the village barber, equipped with his usual knowledge of human nature and endowed with a fair sense of justice. As bearing upon this, it may be interesting to know that in 1929, 30,935 cases in the Superior Court were marked inactive under a rule of court which provided in substance 'that in each year every case or proceeding which has remained upon the law, equity or divorce docket for two years preceding, without action shown upon the docket other than placing on the trial list, or marking for trial, being set down for trial, or the filing of appearance, or the withdrawal of appearance, shall be marked inactive by the clerk,' and 'if within three years after a case or proceeding has been marked inactive it has not been tried or disposed of, it shall, unless the court shall otherwise order, be dismissed and judgment or decree of dismissal entered by the clerk on the day next following the expiration of said three years without further notice or order. For cause shown the court may dismiss cases at other times.' . . .

"When the time first arrived under the rule for dismissal of cases, 14,879 were dismissed. . . .

"The layman may well wonder why such a large number of cases are entered only to be allowed to languish and eventually be turned out of court because of inaction. Perhaps he will ask whether such actions are really cases after all. It would be a tremendous task to ascertain the reasons for all of these dismissals in 1929, but the bald fact remains that they were turned out of court. If the parties plaintiffs in these actions paid the sheriffs for service of the writs and the entry fees, this means that nearly $90,000 was spent by them to no avail. If we could know what they paid their attorneys and what expense the defendants were put to, it is safe to say that well over a million dollars was spent for litigation, which experienced a timely but natural death. And this makes no account of the loss of time which the litigants sustained. . . .

"From the statistics it appears that something over 80% of the cases disposed of, not including those dismissed, are settled by the parties without full trial. Perhaps, if it cost more to enter cases and also to defend them when entered, the parties would not be so quick to resort to the courts in view of this percentage. Perhaps, the certain knowledge of added costs would be an effective argument for the plaintiff to exhaust all reasonable means to effect a settlement before bringing suit and for the defendant, at least, to talk settlement.

"Whatever the results might be along these lines, the fact remains that the commonwealth and counties would be relieved in part of a heavy burden which they now bear. Possibly, one reason why these burdens do not seem impressive is that they are distributed annually among the commonwealth and the several counties." See footnote*.

As stated in the 4th report of the council (pp. 24-25), a jury fee was required in Massachusetts from 1805 to 1836.

By s. 1 of Chapter 63 of the Acts of 1805 (January session, Chapter 37)—an act to increase the fees of grand and petit jurors and witnesses—it was provided that the fees for jurors should be

* In addition to the figures tabulated above the usual annual tables 9, 10 and 11 in the Appendix (pp. 115-117 to this report) show the cases "marked inactive" and cases "dismissed".

one dollar and twenty-five cents for attendance, and four cents a mile for their travel out and home—"and there shall be paid to the Clerks of said Courts respectively, by the plaintiff or appellant the sum of Seven Dollars for the trial of each civil action, for the use of the County." A jury of twelve men in 1805 received $15.00 a day for attendance so that the plaintiff by paying $7.00 trial fee paid nearly half the expense of the jury. Today the expense each day for a jury of twelve men who sit on a case is $96. for the jurors only, not to speak of the additional jurors in attendance or the salaries of judge, court officers and other overhead cost.

In the 10th report (p. 10) the Council pointed out that with the growth of modern business and of expanding problems, the developments in our legal structure have been, from necessity, to develop the courts at the bottom of the legal pyramid to handle the business for which they are adapted and equipped without exorbitant public cost.

We renew the recommendation for a jury fee of $15. for a claim of a full jury of 12, and a fee of $5. for claims for a six man jury. Cases have been tried to small juries by consent of parties—even to juries of three. In any event, we believe that a reasonable jury fee would work, as it did in New York, in screening and reducing claims for the form of trial most productive of congestion and delay and most expensive to the public.

Second—we renew the recommendation in our 27th report of 1951 for the experiment in the Superior Court of oral depositions of *parties* before trial. As pointed out in the report of the Judication Commission in 1920 a somewhat similar provision has been in operation in New Hampshire for about 83 years and even longer in Wisconsin* and for about a dozen years in the Federal system under the Federal rules. Under these rules witnesses also may be examined in advance of trial, but we limit our recommendation to parties. The procedure, adapted to getting at the facts as soon as possible, results in many settlements and in reducing the issues to be tried. Our blind practice of pleading is entirely opposed to the original purpose of the Practice Act of 1851 and encourages delay and multiplication of issues. (See M.L.Q. No. 1, April 1952, p. 75.) Our pre-trial system, used in four or five counties and designed to reduce issues, has helped somewhat, but not enough to meet the problem. Some judges make it much more effective than others and it also calls for cooperation by the bar which is not always apparent. The pre-trial results appear on pp. 97-99.

* See 2nd Report of Judicature Commission (pp. 108-109).

We recommend these two proposals of a jury fee and deposition of *parties*, as effective methods instead of refusing to recognize the causes and attacking and reducing congestion. Nothing ever advances without experiment. These experiments are not new. They have worked elsewhere. If we try them we shall learn something.

Both proposals have been opposed by many (not all) lawyers engaged in tort cases, but as tort business, especially that involving motor vehicle cases, is, perhaps, in the greatest danger of being lifted out of the courts, unless conditions are improved, we suggest that those who oppose the experiments reconsider the matter. We believe the proposals to be in the interest of the lawyers, of their clients and of the public.

The most effective experiment in keeping cases, especially small cases, out of the Superior Court and in the District Courts, was repealed nine years later, with the approval of a majority of the Judicial Council. In the opinion of the present majority the figures seem to illustrate how easy it is to make a mistake of judgment. In viewing congestion in 1932 and 1933, the legislature tried the experiment of chapter 387 of the Acts of 1934 providing that:

> "District Courts shall have exclusive original jurisdiction of actions of tort arising out of the operation of a motor vehicle.

The act contained a right to remove the case to the Superior Court. Prior to that act the table prepared by the Administrative Committee of the District Courts, which appears on page 71 of the 9th report in 1933, was as follows:

	1925-26	1926-27	1927-28	1928-29	1929-30	1930-31	1931-32	1932-33
Civil Writs								
Entered	43,294	47,413	55,491	62,203	65,571	67,846	75,619	75,329
Removals	1,853	1,775	1,971	1,782	2,376	3,168	3,567	3,393

These tables, except the last, related to cases of all kinds. In 1933, for the first time, the entries were broken down into "contract" and "tort" and other cases, and showed, for that year, that, of the 75,329 entries 39,826 were contract, 17,830 tort cases. The removals were not then broken down, but showed as indicated above, only 3,393 removals of all kinds. As already shown the total entries of all kinds in the Superior Court dropped, when the war began, as follows: in 1941, 27,620; in 1942, 26,622; in 1943, 17,759; in 1944, 15,414; in 1945, 16,922.

When the act of 1943, repealing the exclusive original jurisdiction of the District Courts, above quoted, was passed, the

Superior Court entries had dropped from 26,622 to 17,759—a drop of almost 9,000.

The reason for the repeal of the act was stated by the majority of the Council in its 18th report (p. 33) as follows:

"The act has failed of its purpose. It has not resulted in the expected increase in the trial of such cases in District Courts."

The entries of motor tort cases in District Courts and removals from 1935 to 1941 were then stated with a table showing entries and removals in the Boston Municipal Court. Referring to the figures thus stated the majority said

"The percentage of removals in the first year was 28%, in 1936, 33%, in 1937, 40%, in 1938, 41%, in 1939, 40%, 40% in 1940, 38+% in 1941 and about 40% in 1942 (see table on p. 88).

"As the exclusive jurisdiction act took effect on October 1, 1934, the sudden increase in tort removals in 1934 and 1935 shows that the continuing increase in removals is entirely due to that act.

"If it is desirable that more motor vehicle tort cases be tried in the lower courts, eight years' experience seems to have demonstrated that this end cannot be achieved by compelling plaintiffs to enter their cases there. Certainly it is an anomalous procedure that requires a party to begin his action in a court where he has no intention of trying it."

The minority view, on the other hand, was as follows:

"A minority of the Council believes that in spite of the fact that about 40% of the motor vehicle cases entered in the district courts are removed for trial to the Superior Court, the act has succeeded in sifting the large volume of entries so that a large number of cases involving relatively small amounts have remained in the district courts where the work of disposing of them takes less time at a smaller cost than it would in the Superior Court. It seems probable that, since the establishment of the practice of referring motor vehicle cases to auditors in the Superior Court, the desire to get cases before an auditor with the opportunity for a subsequent trial before the court or a jury after the auditor's report, may have been a practical inducement for a considerable number of removals. This opportunity for two trials is similar to the early practice of double trials in civil cases when there was a full appeal on facts and law before 1922, when legislation previously tried in the Boston Municipal Court was extended to all the other district courts to avoid double trials, on the ground that the public should not be put to the expense of providing more than one trial in civil cases as a matter of right.

"In view of the current decrease in the number of motor vehicle accidents due to the gas and tire rationing, the new speed limitations and the consequent reduction of business in the Superior Court, we understand that the practice of referring motor vehicle cases to auditors in that court has been terminated, as the court is in a position to handle the business more promptly than before.

"Under these circumstances, the minority of the Council believes that it would be well to wait before considering the repeal of the act, until the results of current conditions are more clearly ascertained."

The act was in operation for about nine years before its repeal by Chapter 296 of 1943. As the main reasons for repeal were stated that the act had failed in its purpose, because 40% of the motor vehicle entries under it in the District Court were removed to the Superior Court, we call attention to the figures, before the act was passed in 1934, while it was in effect from 1934 to 1943, and since its repeal, from 1943 to 1952. These figures are taken from the comparative tables prepared by the Administrative Committee of the District Courts and reprinted in the 11th report of the Judicial Council p. 56, the 18th report p. 88, the 22nd report p. 93, and the 27th report p. 50 (with the figures to October 1st, 1952 added). See table on p. 18.

CIVIL ENTRIES AND REMOVALS IN THE 72 DISTRICT COURTS, OTHER THAN THE MUNICIPAL COURT OF THE CITY OF BOSTON, FROM 1930 TO 1952.

(Each statistical year runs from October 1st to September 30th)

From 1930-1935 (11th Report p. 56)

	1930-31	1931-32	1932-33	1933-34	1934-35
Civil writs entered	67,846	75,619	75,329	70,797	80,056
Contract	—	—	39,826	34,859	32,036
Tort	—	—	17,830	21,286	32,403
Summary Process (Ejectment)	—	—	16,130	13,514	14,651
All other cases	—	—	1,543	1,138	965
Removals to Superior Court	3,168	3,567	3,393	3,626	8,887

	1934-1935
Total motor tort cases	27,800
Total removals by plaintiffs	3,432
Total removals by defendants	4,277
Total removals by both	52
	7,761

From 1935-1942 (from 18th Report p. 88)

	1935-36	1936-37	1937-38	1938-39	1939-40	1940-41	1941-42
Civil entered	74,560	75,680	82,715	80,998	78,152	78,966	73,723
Contract	28,144	27,890	30,271	30,968	30,735	31,069	29,374
Tort	30,813	32,260	35,886	34,016	32,759	35,133	31,760
Summary Process	14,267	14,707	15,596	14,770	13,673	11,898	10,961
All other cases	1,336	823	962	1,244	985	865	1,628
Rem. to Superior Ct.	10,406	13,065	14,595	13,334	12,805	13,453	12,744
Total motor tort cases	20,568	28,081	31,588	29,585	28,533	31,190	28,425
Removals by pltf.	4,967	6,456	6,851	6,230	5,353	5,209	3,682
Removals by def.	3,850	4,929	6,175	5,470	5,984	6,822	7,880
Removals by both	108	115	50	51	33	44	28
Total removals of motor tort cases	8,925	11,500	13,076	11,751	11,280	12,075	11,590

From 1942-1946 (from 22nd Report p. 93)

	1939-40	1940-41	1941-42	1942-43	1943-44	1944-45	1945-46
Civil entered	78,152	78,966	73,723	48,242	36,001	33,009	38,660
Contract	30,735	31,069	29,374	22,254	17,330	15,027	15,356
Tort	32,759	35,133	31,760	16,978	10,332	9,668	11,416
Summary Process	13,673	11,898	10,961	6,603	7,625	7,464	11,321
All other cases	985	865	1,628	2,407	724	850	567
Rem. to Superior Ct.	12,805	13,453	12,744	6,955	3,049	2,847	3,261
Total motor tort cases	28,533	31,190	28,425	15,165	8,994	8,251	9,836
Removals by pltf.	5,353	5,209	3,682	1,860	25		
Removals by def.	5,984	6,822	7,880	4,147	2,270		
Removals by both	33	44	28	40	1		
Total Removals	11,280	12,075	11,590	6,047	2,296	2,155	2,478

1946-1952 (from this 28th Report p. 83)

	1945-46	1946-47	1947-48	1948-49	1949-50	1950-51	1951-52
Civil Writs Entered	38,660	51,616	59,817	58,697	55,702	51,499	51,496
Contract	15,356	19,676	24,512	29,737	30,647	27,881	28,124
Tort	11,416	13,213	15,443	15,663	14,547	14,917	15,377
Summary Process (Ejectment)	11,321	18,007	18,798	12,282	9,715	7,892	7,282
All Other Cases	567	579	1,064	1,015	793	809	713
Total Motor Cases Entered	9,836	11,398	13,593	13,477	12,456	12,901	12,985
Removed	2,478	2,986	3,315	3,065	2,585	2,502	2,667

The story told by the figures since 1943 seems to have justified the judgment of the minority, above quoted, for, as soon as the war ended, the entries in the Superior Court jumped from 16,722 to 20,363 and have steadily increased to 31,587 in 1952, as shown by the following figures from Table 2 in the Appendix to this report (p. 108).

SUPERIOR COURT 1951-52

Total Entries, 31,587

Original Writs		*Removals from District Courts*		*Others*	
Total	23,399	Total	4,551	Equity	3,328
Contract	3,204	Contract	1,310	Divorce and Nullity	72
Motor Torts	14,394	Motor Torts	2,583	Others	219
Other Torts	4,623	Other Torts	577		
Others	1,178	Others	81		

It should be pointed out that it is impossible to give exact comparative figures for District and Superior Court figures as the annual clerk's returns of Superior Court business run from June

30 to June 30 and those of the District Courts from October 1 to October 1. In spite of this fact the figures indicate the very strong probability that if the act of 1934 had not been repealed, it would, in spite of a large percentage of removals, have continued to sift a large number of cases involving relatively small amounts and kept them in the District Courts "where the work of disposing of them takes less time at smaller cost than—in the Superior Court". It appears probable that about 5,000 motor vehicle cases a year would have stayed in the District Courts under that act thus reducing the load of cases in the Superior Court.

The question naturally arises—why not re-enact the act of 1934? A majority of the Council think the present congested conditions call for its re-enactment in the public interest and, therefore, recommend it. Judge Donahue dissents for reasons stated on p. 72.

We recommend the following

DRAFT ACT No. 1

(As to Jury Fees)

Section 1. Section 4 of chapter 262 of the General Laws as most recently amended by chapter 119 of the acts of 1950 is hereby further amended by inserting therein the following:—

"For filing a claim for jury trial or a motion to frame issues in the Superior Court for jury trial or for the entry in the Superior Court of such issues framed by the Land Court or by a Probate Court, and transmitted to the Superior Court, for trial, *fifteen* dollars, but, if a claim is made, or a motion is made, or issue thus transmitted, for a trial by a jury of six, instead of a full jury of twelve, *five* dollars."

Section 2. Section 60 of chapter 231 of the General Laws is hereby amended by substituting therefor the following:—

"Section 60. Separate lists of cases to be tried by jury, *and by a jury of six,* shall be kept in the Superior Court and no action shall be entered thereon, except as otherwise expressly provided, unless a party, before issue joined, or within ten days after the time allowed for filing the answer or plea, within ten days after the answer or plea, has, by consent of the plaintiff or permission of the court, been filed, or within such time after the parties are at issue as the court may by general or special order direct, files a notice that he desires a jury trial, *or a trial by a jury of six;* but in a case in which damages are demanded, the court may of its own motion refer the assessment thereof to a jury."

DRAFT ACT No. 2

(Discovery by Deposition of Parties)

Chapter 231 of the General Laws is hereby amended by inserting after section 68 the following section 68A.

SUB-SECTION 1. Any party in the Superior Court, after the entry of a writ or the filing of a bill or petition may examine orally any other party, in the city or town within the commonwealth of the residence or usual place of business of the party to be examined, for the discovery of facts and documents admissible in evidence at the trial of the case. The word "party" in this act shall be deemed to include parties intervening or otherwise admitted after the beginning of a suit. Such examination may be used at the trial by the party taking the same or by any other party on paying the cost of taking the same unless the party examined is present at the trial of the case. Nothing herein shall be held to prevent the use of such examination as a declaration or admission of a party, if material, whether or not the party examined is present at the trial, or the use of such examination in connection with cross-examination of such party. Sections sixty-five, sixty-six and sixty-seven of chapter two hundred and thirty-one of the General Laws shall apply under this act.

SUB-SECTION 2. In order to make such examination any party may apply to a justice of the peace or notary public, who shall issue a notice to the party to be examined and all other parties to appear before said justice, notary or commissioner at the time and place appointed for such examination. An attested copy of such notice shall be sent by registered mail to the party to be examined and to all attorneys of record of said party and of all other parties, not less than ten days before the date set for the examination so that they may attend.

SUB-SECTION 3. The party examined shall be sworn or affirmed, and his examination shall be taken in the same manner and subject to the same rules as if taken before a court. The court shall at all times have full control of the examination and may impose reasonable conditions as to its conduct and scope.

SUB-SECTION 4. The party requesting the examination shall be allowed first to examine on all points material to the cause in which the examination is made. The party examined or his attorney may then examine in like manner, after which any party may examine further.

SUB-SECTION 5. The examination shall be taken by a stenographer appointed by the justice, notary or commissioner on the request of either party and at his expense. Said stenographer shall be sworn by the justice, notary or commissioner to transcribe faithfully the testimony, and his transcript shall be certified by the justice, notary or commissioner. In case such request is not made the deposition shall be written by the justice, notary or commissioner or by a disinterested person, in the presence and under the direction of the justice, notary or commissioner. The examination or the stenographer's transcript thereof shall be carefully read to or by the party examined and then subscribed by him.

SUB-SECTION 6. The examination shall be delivered by the justice, notary or commissioner to the court, before which the cause is pending, or shall be enclosed and sealed by him and directed to it, and shall remain sealed until

opened by it. Copies of the deposition, however, may be furnished by the justice, notary or commissioner to any party.

SUB-SECTION 7. Nothing in this act contained shall prevent either party calling and examining verbally at the trial of the action any party in the same manner as though his testimony had not been taken in writing.

SUB-SECTION 8. If a party after due notice fails without reasonable cause to attend and submit himself to examination under this act, the court may make and enter such order, judgment or decree as justice requires, and the court shall have at all times full control of the examination, and may make all proper orders relating thereto.

SUB-SECTION 9. No one without leave of court shall both examine any other party orally under this act and interrogate him in writing under General Laws, chapter two hundred and thirty-one, sections sixty-one to sixty-seven, and no party shall be required to attend and submit himself to examination more than once in the same case except by order of court.

DRAFT ACT No. 3

(Judge Donahue dissenting)

Re-enact Chapter 387 of the Acts of 1934.

VENUE IN DISTRICT COURTS

As stated in our 27th report (pp. 34-35) we think another way to check congestion in the Superior Court is to open the area of jurisdiction of the district courts. We see no reason why cases of contract and all tort cases should not be in the same class with motor vehicle torts for this purpose. Accordingly, for the reasons stated in the report referred to above, we recommend that Section 2 be amended to accomplish this result by the following—

DRAFT ACT

(New words printed in italics)

Section 2 of chapter 233 of the General Laws as most recently amended by section 2 of chapter 296 of the Acts of 1943 is hereby further amended by inserting after the word "ninety" in the second sentence of said section 2 as amended, the words "or any action of tort or of contract" so that said sentence will read as follows:

"An action of tort arising out of the ownership, operation, maintenance, control or use of a motor vehicle or trailer as defined in section one of chapter ninety *or any action of tort or of contract* may be brought in a district court within the judicial district of which one of the parties lives or in any district court the judicial district of which adjoins and is in the same county as the judicial district in which the defendant lives or has his usual place of business; provided, that if one of the parties to any such action lives in Suffolk County such action may be brought in the municipal court of the city of Boston."

Removal of Cases from District Courts Without Claim of Jury Trial.

In our 27th report (p. 7) we explained the present requirement of a jury claim for removal of cases, involving less than a certain amount as a condition of removal from the district courts. As there stated, we think it is no longer advisable to require a jury claim in some cases and not in others. We think it may stimulate claims for jury trial which is not really desired and thus contribute to congestion. Therefore, in order that all cases may be removed on the same basis we again recommend the following

DRAFT ACT

An Act to Eliminate the Necessity of a Claim for Jury Trial in Order to Remove a Cause from the District Courts.

Section 1. Section one hundred and four of chapter two hundred and thirty-one of the General Laws is hereby amended by striking out said section and substituting the following:

Section one hundred and four—No other party to such action shall be entitled to an appeal. In lieu thereof any defendant may within two days after the time allowed for entering his appearance file in said court a claim of trial by the Superior Court together with the sum of five dollars for the entry of the cause of each plaintiff in the Superior Court, and, except as provided in section 107 as amended, a bond in the penal sum of one hundred dollars, with such surety or sureties as may be approved by the plaintiff or the clerk or an assistant clerk of said district court payable to the other party or parties to the cause conditioned to satisfy any judgment for costs which may be entered against him in the Superior Court in said cause within thirty days after the entry thereof. The clerk shall forthwith transmit the papers and entry fee to the clerk of the Superior Court, except that if such trial by the Superior Court is not claimed as to some parties to the action, the district court shall retain jurisdiction as to those parties, and the clerk shall transmit attested copies of the papers in lieu of the originals. Any case removed to the Superior Court under this section shall proceed as though originally entered there.

Section 2. Sections two, three, four and one hundred and five of chapter two hundred and thirty-one are hereby repealed.

H. 166-DEFENCES IN ACTIONS FOR FALSE ARREST OR IMPRISONMENT

(Referred by Resolves Chapter 35)

This bill reads

"Chapter 231 of the General Laws is hereby amended by inserting after section 94 the following section:—

"Section 94A. In any action for illegal arrest or imprisonment the defendant may allege that he believed, upon reasonable cause, that the plaintiff was actually committing the misdemeanor for which he was arrested, and if the allegation is proven, it shall be a justification."

The bill passed both houses and then, as the phraseology was severely criticized, the bill, at the suggestion of the police chiefs, was referred to the Council for further study. We do not recommend the bill but do recommend a substitute as hereinafter explained. The present background of the law of arrest appears in the opinion in Muniz v. Mehlman, 327 Mass. 353. The court (at p. 579) stated the law as to "felonies" as follows:

"In an action for an illegal arrest or imprisonment the burden is on the defendant to prove justification. Bassett v. Porter, 10 Cush. 418, 420. Jackson v. Knowlton, 173 Mass. 94, 95. Roseman v. Korb, 311 Mass. 75, 77. When a peace officer without a warrant arrests a person *for a felony* he need not show that a felony has actually been committed; it is enough if he believes upon reasonable cause that such person has committed a felony. Rohan v. Sawin, 5 Cush. 281, 285, 287. Commonwealth v. Carey, 12 Cush. 246, 251. Commonwealth v. Phelps, 209 Mass. 396, 404. Wax v. McGrath, 255 Mass. 340, 343, 344."

A "felony" has been defined by statute ever since 1852 as follows (now in G.L. c. 274, section 1)

"1. Felony and Misdemeanor—A crime punishable by death or imprisonment in the state prison is a felony. All other crimes are misdemeanors. (1852, 37, s 1; G.S. 168, s 1; P.S. 210, s 1; R.L. 215, s 1.)"

The curious story of this statute and its relation to earlier and later history will be found in an article on "The Legislative History of a State Prison Sentence as a Test of Felony" in 7 Mass. Law Quart. No. 2, Jan. 1922, pp. 91 and 6 M.L.Q. No. 5, August 1921, pp. 241-242.

In the Muniz case, after stating the rule as to arrest for a "felony" above quoted, the court points out that drunkenness and operating "under the influence of intoxicating liquor" are "misdemeanors" citing G.L. c. 274, s. 1; c. 90, s. 24, as amended; c. 272, s. 48; c. 279, s. 24 and Com. v. Cohen, 234 Mass. 76, 77; and states the law that

"A peace officer, in the absence of statute . . . may arrest without a warrant *for a misdemeanor* which (1) involves a breach of the peace, (2) is committed in the presence or view of the officer . . . and (3) is still continuing at the time of the arrest or only interrupted, so that the offence and the arrest form parts of one transaction. Commonwealth v. Gorman, 288 Mass. 294, 297. In the Gorman case it was held that the operation of an automobile

while under the influence of intoxicating liquor (G.L. Ter. Ed. c. 90, s 24) was an offense involving a breach of the peace in that such a breach would be likely to follow unless the offender was restrained, and that an officer was justified in arresting without a warrant a person whom he saw in the act of committing it. The right of an officer to arrest without a warrant for the crime of drunkenness is expressly conferred by G.L. Ter. Ed. c. 274, s 44. . . . But the right to make such an arrest for either of these offences exists if, and only if, the person arrested was actually committing the offence for which he was arrested. The law on this point is settled in cases involving arrests for drunkenness pursuant to the above mentioned statute. Phillips v. Fadden, 125 Mass. 198, 202. Commonwealth v. Dheney, 141 Mass. 102, 103. Eldredge v. Mitchell, 214 Mass. 480, 482. And the rule is the same with respect to arrests without a warrant for breaches of the peace. In general the right of a peace officer to make an arrest for a breach of the peace committed in his presence is no greater than the right of a private citizen. See Look v. Dean, 108 Mass. 116, 120; Carroll v. United States, 267 U.S. 132, 157; Wilgus, Arrest Without a Warrant, 22 Mich. L. Rev. 673; Restatement, Torts, ss 119 (c), 121 (a), comment e. In comment o of s 119 it is said, 'To create the privilege to arrest another (for a breach of the peace committed in the presence of the actor), it is not enough that the actor—whether a private person or a peace officer—reasonably suspects that the other is committing a breach of the peace . . . (subject to certain exceptions not here material). If in fact no breach of the peace has been committed, a mistaken belief on the part of the actor, whether induced by a mistake of law or of fact and however reasonable, that a breach of the peace has been committed by the other, does not confer a privilege to arrest.' Our decisions are not at variance with the rule just stated. Commonwealth v. McLaughlin, 12 Cush. 615, 618. Commonwealth v. Ruggles, 6 Allen, 588, 590. Commonwealth v. Gorman, 288 Mass. 294, 297. McDermott v. W. T. Grant Co. 313 Mass. 736, 738."

Returning to the legislative history of a state prison sentence,—in 1911 by chapter 176 (now in G.L. c. 218, ss. 26, 27 and 30) a "felony" punishable by not more than five years in state prison might be treated as a misdemeanor so far as jurisdiction and sentence are concerned as follows:

"Section 1. Police, district and municipal courts, including the municipal court of the city of Boston, shall have original jurisdiction, concurrent with the superior court, of felonies punishable by imprisonment in the state prison for not more than five years, and also of the crimes mentioned in sections eighteen and nineteen of chapter two hundred and eight of the Revised Laws, and they may impose the same penalties as the superior court in like cases, except imprisonment in the state prison; *provided, however,* that no sentence to a jail or house of correction for a longer term than two years shall be imposed under this act."

The obvious practical purpose of this statute was to bring the minor "felonies" within the jurisdiction of the district courts for

more prompt disposition and relieve the superior court. That purpose was accomplished and incidentally brought some "felonies" to the level of "misdemeanors" while still being "felonies".

The result of this on the law of arrest is that if an officer arrests a man for the minor "felony" of larceny of $100 or more without a warrant because "he believes upon reasonable cause that" the offence was committed in his presence, he has the defense of that "reasonable cause" if he is sued for false arrest. But if he arrests a man for driving "so as to endanger" or driving "under the influence" the "reasonable cause" is no defense if he is sued for false arrest. He must prove the fact of the crime because the offense, though serious, is a "misdemeanor" and not a "felony". This difference in the protection of the officer, based solely on the wholesale statutory label of some things as felonies and some as "misdemeanors" is not in our opinion a just difference. We think the officer should have the protection of the defense of probable cause in both cases regardless of the statutory label. If he is sued for malicious prosecution, as shown by the opinion in the Muniz case (at pp. 358-59), he has the defense of probable cause regardless of the label of the offense. We believe the present arbitrary distinction in the protection of the officer, which we have explained in detail, is against the public interest in the modern conditions of rapid travel when unknown persons may easily commit serious crimes in the presence of an officer and escape. The officer if he makes the arrest with probable cause must take the risk of having his property attached and of being subjected to damages with serious consequences to himself and his family in a suit, if he cannot convince a judge or jury that the crime was actually committed. This does not seem to us fair to the officer whose function is to protect the community.

We recommend the following

DRAFT ACT

If a person authorized to make an arrest shall have probable cause to believe that a misdemeanor for which he may make an arrest is being committed in his presence, such probable cause shall be a defense in an action brought against him for false arrest or imprisonment.

NOTE

This draft act avoids any suggestion of enlarging the power of police officers to arrest without warrant.

SPECIFIC PERFORMANCE

In our report for 1951 we recommended an act to clarify the law relating to the specific performance of contracts. This suggestion was not adopted. Our reasons were stated in full in that report pp. 9-13 and for those reasons incorporated herein by reference we again recommend the act thus submitted, with a clause inserted (to avoid misunderstanding) that the act shall not apply to contracts for purely personal services such as a contract by a singer to sing or other similar purely personal service. Such services obviously differ from contracts to secure, or complete and deliver a car, or machine or other things. We recommend the following

DRAFT ACT

Chapter 214 of the G.L. is hereby amended by inserting after Section 1 a new section 1A as follows:

Section 1A. The fact that the plaintiff has a remedy at law for damages shall not bar a suit in equity for specific performance *of a contract other than one for purely personal services* if the court finds that no other existing remedy or the damages recoverable thereby are in fact the equivalent of the performance promised by the contract relied on by the plaintiff and the court may order specific performance if it finds such remedy to be practicable. If performance is not decreed, damages may be determined in the proceeding, and if the defendant claims a jury on that issue, the issue shall be framed and referred for jury trial.

PROCEDURE FOR ATTACHMENT OF WAGES

In our report for 1951, pp. 13-15, at the request of the legislature, we recommended an act to clarify the procedure under chapter 558 of the acts of 1950 because of the variation of practice of judges as to the interpretation of the act, resulting not only in unnecessary waste of time and expense of both the parties and the courts, but also in an indefinite number of illegal attachments which are not known to be illegal. As the bill recommended was not adopted, the law was left in a condition which should not be allowed to continue as it causes confusion and waste action. We refer to the discussion in the 27th report and again recommend the following:

DRAFT ACT

AN ACT FURTHER REGULATING THE ATTACHMENT OF WAGES FOR PERSONAL LABOR AND SERVICES

Section 32 of chapter 246 of the General Laws is hereby amended by striking out paragraph Eighth, as amended by chapter 558 of the acts of 1950, and inserting in place thereof the following:—

Eighth, By reason of money or credits due for the wages of personal labor or services of the defendant, unless such attachment is authorized in advance by written permission endorsed upon the writ and signed by a justice, associate justice or special justice of the court in which the action is commenced and application to said justice, associate justice or special justice of the court for permission for said attachment shall be made only after five days written notice has been delivered or sent by mail, postage prepaid, to the defendant at his last known address, place of business or employment. Such notice shall contain the name of the plaintiff, the name of the court in which the action is to be commenced, the nature of the claim, the time and place such application will be made, and shall inform the defendant that he is entitled to be present and be heard at said time and place if he objects to the granting of said application. A copy of said notice and a certificate of the person sending or delivering said notice shall be evidence thereof. Notwithstanding the preceding provisions relating to notice, if the said justice, associate justice or special justice finds in his discretion that compliance with said provisions relating to notice will unreasonably delay and hinder justice he may authorize the attachment with a shorter notice, or without notice, to the defendant.

NOTE

The last sentence of this draft (as explained in the 27th report pp. 14-15) is to "provide for unusual cases where the defendant has left his employment and has left the commonwealth with no known address or under other circumstances making the notice above specified impracticable but has wages due him from an employer in the Commonwealth."

While the law should be changed even without the last sentence, the sentence if adopted would be in the interest of justice where a man is running away from his debt.

H.873 RELATIVE TO REGISTRATION OF MOTOR CARS OF MINORS

(Referred by Resolves, Chapter 24)

This bill provides

"Section 9 of chapter 90 of the General Laws is hereby amended by adding at the end thereof the following sentence:—

A motor vehicle or trailer shall be deemed to be registered in accordance with this chapter notwithstanding the fact that it shall be registered in the name of a parent or legal guardian of the minor owner thereof and such registration shall be legal for the balance of the calendar year in which said minor owner shall become of age."

Under Section 9 of Chapter 90 and the opinion in Dudley v. Northampton St. R. Co., 202 Mass. 443 at p. 447 a car must legally

be registered in the name of the owner if it is to be legally on the way. As a minor cannot legally sign a binding contract to buy a car, the contract of purchase is signed by his guardian if he has one or by one of his parents if they are buying the car for him, and the car is then registered in the name of the person who signs the agreement of purchase as if he were the owner. This proceeding fits the law about the making of contracts, but does not fit the law about car registration. The result is that the unfortunate minor, although the real owner of the car, may find himself a trespasser on the way. Being legally "a trespasser" he now cannot recover damages if he, or his car, is damaged by another person's negligence and he has no defense if sued by another person, even if he is not negligent.

The unjust condition of the present law is not generally understood and many minors are probably in an unfortunate position. We recommend the bill as in the interest of justice.

TELEVISING OR BROADCASTING TESTIMONY

Many lawyers and judges throughout the country were shocked by the practice adopted in congressional committee hearings in Washington and elsewhere of televising the examination of witnesses who were obliged to testify under Klieg lights. The public doubtless enjoyed it as a dramatic spectacle which stirred the country; but is it a fair method of inquiry? We think not. Surely it would not be considered a fair method of administering justice if that sort of thing were allowed in a courtroom with a man on trial for his life or his reputation.

At the meeting of the House of Delegates of the American Bar Association (composed of representative lawyers from all of the states) in Chicago in February 1952, following a report of a committee, a resolution was adopted, as recommended by the committee,

> "That the American Bar Association condemns the practice of television and broadcasting the testimony of witnesses when called before investigating committees of Congress and recommends that appropriate action be taken to restrain or prevent it."

The New York legislature, by chapter 241 of the acts of 1952, provided,

> "No person, firm, association or corporation shall televise, broadcast, take motion pictures or arrange for the televising, broadcasting, or taking of motion pictures within this state of proceedings, in which the testimony of witnesses

by subpoena or other compulsory process is or may be taken, conducted by a court, commission, committee, administrative agency or other tribunal in this state.

"Any violation of the section shall be a misdemeanor.

"This act shall take effect immediately."

We think not only that somewhat similar legislation should be enacted in Massachusetts but that it should contain the additional protection for the witness of the right to refuse to testify under such conditions so that he can protect himself and that no adverse inference, implication or comment should be made as to such refusal.

However much the public may enjoy the spectacle, experienced judges and lawyers know that the ordeal of witnesses, and we mean honest witnesses, in being examined by lawyers or others is often a severe ordeal under any circumstances. They are often unaccustomed to such proceedings and are shy, nervous and frightened and uncertain. This is, of course, intensified when they are made conscious of being spectacles in a public drama on the screen or on the air. It is not in the tradition of American justice. We think it should be stopped and that Massachusetts should prevent it before it begins here and help to lead the way to better practice. We recommend the following:

DRAFT ACT

Chapter 268 of the General Laws is hereby amended by adding at the end thereof the following new sections:

Section 39. No person, firm, association or corporation shall televise, broadcast, take motion pictures or arrange for the televising, broadcasting or taking of motion pictures within the Commonwealth of any proceedings in which the testimony of witnesses is or may be taken, before a legislative, judicial or executive body or other public agency or tribunal. Violation of this section shall be punishable by a fine of one thousand dollars or a sentence to jail or the house of correction for not more than one year.

Section 40. No such body, agency or tribunal conducting such a proceeding in this Commonwealth, nor anyone on its behalf shall require or permit any person to testify before televising, broadcasting or motion picture instruments or apparatus in operation. Any person may of right refuse to testify before such instruments or apparatus and no proceedings for contempt or other adverse proceedings shall be taken against him for such refusal nor shall such refusal be commented on or made the basis of any inference whatever adverse to the person so refusing.

Sections 39 and 40 may be enforced by proceedings in equity.

JUDGMENTS IN ACTIONS OF CONTRACT IN WHICH THERE IS NO DISPUTE OF FACT

For years the legislature has been trying to reduce delay, congestion and waste of time in the disposition of judicial business which are matters of recurrent public comment. Experience in other jurisdictions has shown that one method of helping such reduction is to provide procedure for ascertaining whether there are any disputed questions of fact to be tried and, if not, to provide for judgments on questions of law raised by the undisputed facts. Such decisions on questions of law are called, in technical language, "summary judgments" and the rulings of law on which they are based can be carried to the supreme court as such rulings can be carried up by appellate proceedings in other cases after a trial. The purpose of the procedure is to avoid the public expense of a trial and the resulting delay of other cases, as well as the private expense and delay to the parties themselves. It seems hardly necessary to explain that where the material facts are not disputed, there is nothing but a question of law, and that nobody has a constitutional right to waste the public money and the time of the public's judges by a trial when there is nothing to be tried.

We have explained this at some length as there appears to be misunderstanding about it even among lawyers.

A bill on this subject (H. 486 of 1948) was referred to the Council by Resolves Chapter 6 of 1948. The Council revised the bill and recommended a new draft in its 24th report in 1948. It was not adopted and the Council renewed its recommendation in its 25th report in 1949, with the result that in 1950 the bill was reported favorably by the Judiciary Committee, passed the House and was ordered to a 3rd reading in the Senate. It was then referred to the next legislative session. We again recommended the bill in the 26th report in 1950 (pp. 8-9), and again in the 27th report in 1951 (pp. 7-9). It was substituted for an adverse report in the House but failed again in the Senate.

It has come to our attention that the doubts which have defeated the passage of the bill which we recommended may have arisen from an opinion of the court in 1910, in Weeks v. Brooks, 205 Mass. 458, at p. 463 and cases there cited.

We submit that the decision and opinion in that case do not raise any doubt as to the validity of the bill which we recommend which is expressly applicable to cases of "contract." That case involved a contract and a plan. The court said "*even if it was*

undisputed that the . . . plan correctly indicated the original lines of the streets with subsequent alterations. . . . The construction of the agreement was for the court when read in the light of the evidence, but *its application to the land was a question of fact"* for trial.

The bill, which we recommend, would not apply to such a case, but only to cases where there is no disputed question of fact, and, as to those, the law was stated by Mr. Justice Dolan in Atwood, v. Boston, 310 Mass. 70 at p. 75 as follows:

> "Where there is conflicting evidence respecting the circumstances of the parties and the condition of the subject with which they are dealing, then a proper case arises for the jury. Way v. Greer, 196 Mass. 237, 246, 247. But where as appears in the present case the extrinsic evidence it not disputed or conflicting as to the material facts required to be found, the interpretation of the contract in its light still *remains a question for the judge.* Smith v. Faulkner, 12 Gray, 251, 255. Williston, Contracts (Rev. ed.) s. 616. 65 Am. L. R. 648, 652. Construing the contract in question, guided by these principles, we are of opinion that the judge should have granted the defendant's motion for a directed verdict in its favor . . ."

In Howe v. Natl. Life Ins. Co., 321 Mass. 283, there was no dispute as to the facts on which it was decided that "the plaintiff—had no cause of action" to be tried (see p. 289). Under the bill which we recommend those undisputed facts could have been ascertained in advance of trial and the question of law argued and decided instead of wasting the time and money of the public and the parties by a needless and futile trial when there was nothing for the jury to try.

The bill submitted below is specially guarded in its wording *by the words printed in italics.* We again recommend the following:

DRAFT ACT

AN ACT TO PERMIT JUDGMENT IN ACTIONS OF CONTRACT IN WHICH THERE IS NO DISPUTE OF FACT.

SECTION 1. Chapter 231 of the General Laws is hereby amended by striking out section 59 and the caption immediately preceding it, as appearing in the Tercentenary Edition, and inserting, under the caption MOTIONS FOR SUMMARY JUDGMENT, the following section:—

> *Section 59.* In any action of *contract, except an action against an executor or administrator for liability of the deceased,* at any time after the completion of the pleadings counsel for either party may file an affidavit that in his belief *there is no genuine issue of material fact but only questions of law* in connection with all or some part of the action, or of some issue determinative thereof, and move for an immediate entry of judgment thereon. Said

motion may be accompanied by affidavits on personal knowledge of admissible facts as to which it appears *affirmatively* that the affiants would be competent to testify. The facts stated in the accompanying affidavits shall be taken to be admitted for the purpose of the motion unless within twenty-one days, or such further time as the court may order, contradictory affidavits are filed, or the opposing party shall file an affidavit showing specifically and clearly reasonable grounds for believing that contradiction can be presented at the trial but cannot be furnished by affidavits. Copies of all motions and affidavits hereunder shall be furnished upon filing to opposing counsel. If admissions in the pleadings, interrogatories, admissions under chapter two hundred and thirty-one, section sixty-nine, stipulations or *affidavits* hereunder *show affimatively, that* except as to the amount of damages *no genuine issue of material facts exists and that there is nothing to be decided except questions of law,* an order for default, or judgment for the moving party, shall forthwith be entered *if he shall be entitled thereto as a matter of law,* subject to an assessment of damages, if required.

SECTION 2. Said chapter 231 is hereby further amended by striking out section 59A, as so appearing, and inserting in place thereof, under the caption ADVANCING CAUSES FOR SPEEDY TRIAL, the following section:—

Section 59A. In any action at law or suit in equity in the supreme judicial court or in the superior court, the court may on motion for cause shown advance said action or suit for speedy trial. If, in an action removed by the defendant from a district court, the court is satisfied, upon an inspection of the declaration, that the plaintiff seeks to recover solely for his personal labor, with or without interest, the court shall, upon motion, advance such action for speedy trial.

NOTE

Section 2 of the bill does not change the law, but merely transfers a sentence now in Section 59 to Section 59A where it belongs.

INTERLOCUTORY REPORTS IN CRIMINAL CASES

Our attention has been called to the practical question—whether there should be any method by which a question of law the answer to which may be decisive as to the need of a possibly protracted trial in a criminal case, can be brought before the full bench of the Supreme Judicial Court for decision *before trial* by what is known as an "interlocutory" report by the trial judge of the Superior Court. We think the question deserves consideration in the public interest.

The Superior Court was created by chap. 196 of the acts of 1859. The present section III of chap. 231 of the General Laws relating to practice in *civil* cases provides the superior court with authority at its discretion to report questions of law *before trial,* to the Supreme Judicial Court as follows:

"If a justice of the Supreme Judicial or the Superior Court is of the opinion that an interlocutory finding or order made by him ought to be determined by the full court before any further proceedings in the trial court, he may report the case for that purpose and stay all further proceedings except such as are necessary to preserve the rights of the parties."

In criminal cases however such questions cannot be reported until after a person has been "convicted." See Com. v. Blinn, 219 Mass. 386, and sec. 30 of chap. 278 relating to criminal cases which reads

"Section 30, Reports,—If, upon the trial of a person convicted in the superior court, a question of law arises, which, in the opinion of the presiding justice, is so important or doubtful as to require the decision of the supreme judicial court, he shall, if the defendant desires or consents to it, report the case so far as necessary to present the question of law arising therein; and thereupon the case shall be continued to await the decision of the supreme judicial court. (1830, 113, s 4; 1832, 130, s 5; R.S. 138, s 12; G.S. 173, s 8; P.S. 214, s 29; R.L. 219, s 34.)"

The history of these statutes up to 1880 appears in the opinion of Chief Justice Gray in Terry v. Brightman, 129 Mass. 535, at pp. 537, 538, as follows:

"The justices of this court have long had the power of reserving and reporting, at their discretion, at any stage of the case, for the determination of the full court, questions of law arising in any trial or other proceeding, civil or criminal; and this power has been recognized in each revision of the statutes of the Commonwealth. Rev. Sts. c. 81, s. 26, and note of Commissioners. Gen. Sts. c. 112, s. 10; c. 113, s. 15. Shaw, C.J., in *Higbee* v. *Bacon*, 11 Pick. 423, 428, 429.

"But the Legislature has never seen fit to entrust so large a power to the judges of any inferior court, who have no share in discharging the burden thus imposed upon the full bench of this court. In criminal cases, the Court of Common Pleas and the Superior Court have been authorized to report, after conviction, and at the desire or with the consent of the defendant, important or doubtful questions of law; but neither of those courts has ever been authorized to report before conviction. St. 1832, c. 130, s. 5. Rev. Sts. c. 138, s. 12. Gen. Sts. c. 173, s. 8. *Commonwealth v. Intoxicating Liquors*, 105 Mass. 468. In civil cases, the judge of the Court of Common Pleas has no authority to reserve questions of law upon report. *Goddard v. Perkins*, 9 Gray, 411, 412. Nor had the judges of the Superior Court of the County of Suffolk. St. 1855, c. 449. Upon the establishment of the Superior Court having jurisdiction throughout the Commonwealth, the judges thereof were authorized to report such questions after verdict only; and before the St. of 1878, c. 231, they had no power to report questions of law in civil cases tried without a jury. St. 1859, c. 196, s. 32. Gen. Sts. c. 115, s. 6. *Lincoln v. Parsons*, 1 Allen, 388. *Bearce v. Bowker*, 115 Mass. 129. *Commonwealth v. Dowdican's Bail*, 115 Mass. 133.

> "The St. of 1869, c. 438, which empowered the Superior Court by consent of the parties to the suit, to report before verdict questions of law for the determination of this court, and thus for the first time enabled the judges of a lower court to call for the advice of the court of ultimate appeal in advance, before performing their own appropriate judicial functions as the court of original jurisdiction, was found extremely inconvenient in practice, by the frequent sending up to this court of questions obscurely and imperfectly presented for want of a full trial in the court below, and which, if the case had been fully tried there, might have become immaterial to the final result."

In Com. v. Cronin, 245 Mass. 163 at p. 165 Rugg, C.J. lists cases including the Blinn and Terry v. Brightman cases and said "This court has no jurisdiction to decide an interlocutory question arising in a criminal prosecution until the case shall have been finally disposed of by conviction."

The Supreme Judicial Court does not try criminal cases now but in the early days it did and section 26 of chap. 81 of the Revised Statutes of 1836 (cited by Gray, C.J.) provided

> "When any question of law shall arise, in any trial or other proceeding, either of a civil or *criminal nature*, at law or in equity before the said court, when held by one justice, he may reserve the same for the consideration of the full court, to be held for the same county, and shall report the case, or as much thereof as may be necessary for a full understanding of the question."

The commissioners in their notes said this section stated the established practice which, with other statutes relating to the Supreme Judicial Court dates back to the broad language of section 2 of chap. 9 of the acts of 1782.

The business of the Commonwealth and of the Superior Court has increased in the 72 years since 1880 and although the Superior Court has been enlarged to 32 judges the problem of delay resulting from congested dockets has been a subject of study and of complaints for more than 20 years, especially since the adoption of the compulsory motor vehicle law in 1925. With the expansion of law in many directions and the fact that all criminal trials were transferred from the Supreme Judicial Court to the Superior Court many years ago, we think the authority which a justice of the Supreme Court formerly had should also be given to the Superior Court justices who now have the responsibility of conducting criminal trials. It would seem that they should have authority expressly recognized by statute, to deal with exceptional cases and prevent the possible injustice of a protracted trial (lasting perhaps weeks or months and delaying other trials) by a carefully prepared interlocutory report, where the judge considers that justice to

the Commonwealth and the defendant calls for a decision whether his ruling on a decisive question of law is right or wrong before everyone involved is subjected to the ordeal of a long trial. Excessive use of such interlocutory reports by trial judges can be readily checked by the sound judicial discretion of the Supreme Court in criminal cases as it is in civil cases.

In John Hetherington & Sons Ltd. v. William Firth Co., 212 Mass. 257, a civil case in which the power existed, Rugg, C.J., discussed the exercise of discretion (at pp. 259-260 as follows):

> "Considerable discretion is conferred upon judges of the Superior Court in reporting cases before they are ripe for final judgment. If this discretion should be too generously exercised, and if moot, speculative or subsidiary questions are reported, they would not be considered. The statute does not permit a return to the prolific power given to the Superior Court by St. 1869, c. 438, which was found by practice so extremely inconvenient that it was repealed by St. 1878, c. 231. Terry v. Brightman, 129 Mass. 535. Bearce v. Bowker, 115 Mass. 129. Nobel v. Boston, 111 Mass. 485. The question presented by this report is fundamental and vital in a new trial, and its decision now is in the interest of economy of time and expense."

When such authority and discretion exists, as it should, in the trial judge in civil cases, we see no reason why it should not exist in criminal cases in which a man's life, liberty or reputation may be involved. We recommend the following:

DRAFT ACT

Chapter 278 of the General Laws is hereby amended by inserting after section 30 a new section 30A as follows:—

Section 30A. If prior to the trial of a person in a criminal case in the Superior Court, a question of law arises which in the opinion of the presiding justice, is so important or doubtful as to require the decision of the Supreme Judicial Court thereon *before trial*, in the interest of justice, he may, if the defendant desires or consents to it, report the case so far as necessary to present the question of law arising therein; and thereupon the case shall be continued for trial to await the decision of the Supreme Judicial Court.

H. 321 AS TO PUBLIC ADMINISTRATORS

(Referred by Resolves Chapter 22)

The bill provides that

"Chapter 194 of the General Laws is hereby amended by adding after section 5 the following section:—

"Section 5A. Administration shall not be granted to a public administrator until after the expiration of ten days from the date of death of the deceased."

We approve the purpose of the bill. Section 1 of chapter 193 of the General Laws provides,

> "Administration, to Whom Granted.—Administration of the estate of a person deceased intestate shall be granted to one or more of the persons hereinafter mentioned and in the order named, if competent and suitable for the discharge of the trust and willing to undertake it, unless the court deems it proper to appoint some other person:
>
> "First, The widow or surviving husband of the deceased.
>
> "Second, The next of kin or their guardians or conservators as the court shall determine.
>
> "Third, If none of the above are competent or if they all renounce the administration or without sufficient cause neglect for thirty days after the death of the intestate to take administration of his estate, one or more of the principal creditors, after public notice upon the petition.
>
> "Fourth, If there is no widow, husband or next of kin within the commonwealth, a public administrator."

The substance of this statute dates back to the 18th century and in 1837 in Cobb v. Newcomb, 19 Pick 336 at p. 337, Shaw, C. J. said of it,

> "The right of administration may often be a valuable one, and is now to some extent fixed by law and does not depend upon the mere judicial discretion of the judge. Revised stat. c. 64 s. 4. The right is first in the widow and next of kin, either or both, as the judge may order."

Section 5 of chapter 194 should be read with section 1 of chapter 193 above quoted. Section 5 reads,

> "Public Administrators Not to Act When Heir, etc., Claims the Right or if Estate Consists Solely of Certain Savings Deposits.—Administration shall not be granted to a public administrator when the husband, widow or an heir of the deceased, in writing, claims the right of administration or requests the appointment of some other suitable person to the trust, if such husband, widow, heir or other person accepts the trust and gives the bond required, nor when the sole known assets of the estate of the deceased consist of an amount of money standing to his credit in a savings bank or in the savings department of a trust company, in case such account has not been increased by a deposit, nor decreased by a withdrawal of any part of his deposits or of any part of the interest thereon, during a period of twenty years or more next preceding the petition for such administration."

The statement of Chief Justice Shaw, above quoted, as to the valuable right of members of the family to administration is as true today as it was then. The court's discretion is to be governed by it, assuming competence and suitability, see Schenk v. Buckley,

307 Mass. 186, 188 cited and approved in Black v. Dobbins, 325 Mass. 587 at p. 589.

The apparently unqualified sentences at the end of the opinion in Black v. Dobbins related merely to the facts in that case and were obviously not intended to modify the statement of Chief Justice Shaw in the Cobb case which was not referred to. Public administrators have no absolute rights to appointment and should not be in a position to deprive the family of opportunity to find out about the estate and decide what to do. There is no reason why a public administrator should have an opportunity to hurry things, except his own interest. If there is anything about the estate calling for immediate action a special administrator can be appointed. Members of the family may live in distant parts of the Commonwealth or outside. Section 1 above quoted mentions 30 days before a creditor applies and creditors if competent have precedence of public administrators.

We recommend the bill changing the time from 10 to 30 days.

ASSENT REQUIRED FOR ADOPTION

In 1949 a legal difficulty arising under the opinion in Broman v. Byrne, 322 Mass. 578, in adoption proceedings, was called to the attention of the legislature by a bill which was referred to the Council. The subject was discussed in our 26th report and again in our 27th report (pp. 19-20). The reasons in support of legislation were stated as follows:

> In Broman v. Byrne "the Court said 'If the father is deprived of the custody of his child by order of the Court, the common law duty of support ceases and, apart from statute, his obligation in this respect is then to be determined by judicial decree. In the present case, after the custody of the child was given by decree to the petitioner, in the absence of any order of Court the respondent was no longer liable for its support. . . . Since the respondent has not consented to the proposed adoption and it does not appear that he has wilfully deserted or neglected to provide proper care and maintenance for the child in accordance with the provisions of Chapter 210, Sec. 3, the decree is reversed and a decree is to be entered dismissing the petition'.
>
> "In other words, what this case says is that the father of a child whose custody has been given to the mother (or some third party) is only obligated to support it to the extent ordered by the Court in the custody proceedings.
>
> "But here is the difficulty: It has long been the law that no alimony or support order may be entered against a libellee or respondent unless he is personally served within the Commonwealth, or unless his property within the Commonwealth has been attached. Schmidt v. Schmidt, 280 Mass. 215 at 219; Parker vs. Parker, 211 Mass. 139; Pennoyer v. Neff, 95 U.S. 714.

"Consequently a man who is divorced by his wife but who was outside the Commonwealth so that personal service on him within the Commonwealth was impossible, can decline to give any support whatsoever to his child for one year or for *ten years* and can still prevent that child from being adopted. No order for support could be made against him because he was not served with process within the Commonwealth, and so by the doctrine of Broman v. Byrne he has not been guilty of deserting or neglecting to provide proper care and maintenance for his child within the meaning of Section 3 of Chapter 210.

"The proposed bill is designed to cover just such a situation as arose in Broman v. Byrne and to require a father to support his child whether it is in his custody or the custody of another or else submit to its adoption. He should not be permitted to block a good adoption when he himself will not support the child."

The bill submitted by the Council last year in its 27th report (p. 21) was not adopted, but, another bill was enacted as Chapter 352 of the Acts of 1952 which inserted in Section 3 of Chapter 210 the following words: "and the foregoing provision [that the father's consent shall not be required if he has deserted or neglected to provide for the child for one year last preceding the date of the petition] shall be applicable to the father of the child and his consent shall not be required notwithstanding the absence of a court decree ordering the father to pay for the support of said child and notwithstanding a court decree awarding custody of the child to its mother".

These words cover the case of Broman v. Byrne but as pointed out in an article in Massachusetts Law Quarterly, No. 3, for October 1952, at p. 59, they do not seem to cover the case of Zalis v. Ksypka, 315 Mass. 479 where the mother had died and custody was given to the maternal grandmother. Nor does it cover the cases where the mother absconds and deserts the child. We think the word "another" should be substituted for the word "mother" and the act applied to "parents" so that the interest of the child may be protected from the neglect of an absconding parent or parents, to whomever custody is awarded.

We recommend the following:

DRAFT ACT

Section 3 of Chapter 210 of the General Laws, as amended by Chapter 352 of the Acts of 1951 by striking out the clause inserted by the amendment inserted by said chapter 352 [quoted above] and substituting the following clause:

"And the foregoing provision shall be applicable to the parent or parents of the child and his or their consent shall not be required notwithstanding the absence of a court decree ordering said parent or parents to pay for the

support of said child, and notwithstanding a court decree awarding custody of said child to another."

THE RECIPROCAL NON-SUPPORT ACT

In our 27th report we also pointed out a similar hole in the recent "uniform" reciprocal non-support act—chapter 657 of 1951 which would defeat the operation of that act, and recommended an act to close the hole. For this purpose we again recommend the following:

DRAFT ACT

Section 3 of Chapter 657 of the Acts of 1951 is hereby amended by adding the following new paragraph:

"For the purposes of this act the legal duty of the parent or parents to support a minor child shall continue notwithstanding the absence of a court decree ordering them or either of them to pay for the support of said child and notwithstanding any court decree granting custody of such child to another; provided, however, that where decree stipulates an amount to be paid by them or either of them for said child's support they shall not be obligated in excess of that amount."

S. 315 AND H. 925, FOR INCREASED AND RETROACTIVE PAYMENTS IN WORKMEN'S COMPENSATION

(Referred by Resolves Chapter 54)

Senate 315 reads as follows:

AN ACT DECLARING AN EMERGENCY AND TO STOP THE PAUPERIZATION OF INJURED WORKERS AND THEIR DEPENDENTS UNDER THE WORKMEN'S COMPENSATION ACT.

Whereas, It is recognized that the cost of the necessaries of life has increased greatly in the past several years; and

Whereas, Many citizens of the commonwealth who receive weekly benefits under the workmen's compensation act are unable to maintain health and decency on the benefits allowable under the workmen's compensation act, as of the date their personal injuries occurred; and

Whereas; This condition creates a grave danger to the public health and safety of all the inhabitants of the commonwealth;; ;therefore, acting under the police power and other powers of this commonwealth, it is hereby declared that an emergency exists.

Chapter 152 of the General Laws, as amended, is hereby further amended by striking out section 2A, inserted by chapter 385 of the acts of 1946, and inserting in place thereof the following section:—

Section 2A. The weekly compensation benefits provided by this chapter, including those provided by sections thirty-one, thirty-four, thirty-four A,

thirty-five, thirty-five A and thirty-six, shall apply not only in cases of personal injuries occurring on or after its effective date, but also shall apply, but only as to payments made after its effective date, in cases of personal injuries occurring before its effective date where the injured employee or his dependents are receiving weekly compensation on said effective date or shall receive weekly compensation at any time thereafter whether under an agreement approved by the department, or under a decision of a member of the department or of the reviewing board, or under a decree of the superior court or of the supreme judicial court, notwithstanding any provisions of any other section of the workmen's compensation act, as amended.

H. 925 (with an identical preamble of "whereases") provides (the additional words, being printed below in italics):

Chapter 152 of the General Laws, as amended, is hereby further amended by striking out section 2A, inserted by chapter 386 of the acts of 1946, *and inserting in section 37 the following additional paragraph at the end thereof:—*

The weekly compensation benefits provided by every act in amendment of sections thirty-one, thirty-four, thirty-four A, thirty-five and thirty-five A of this chapter shall apply not only in cases of personal injuries occurring on or after its effective date, but also shall apply, but only as to payments made after its effective date, in cases of personal injuries occurring before its effective date where the injured employee or his dependents are receiving weekly compensation on said effective date, or shall receive weekly compensation at any time thereafter whether under an agreement approved by the department, or under a decision of a member of the department or of the reviewing board, or under a decree of the superior court or of the supreme judicial court, notwithstanding any provisions of any other section of the workmen's compensation act, as amended. *The insurer shall be reimbursed by the state treasurer from the fund established by section sixty-five or any payments made hereunder in excess of the amounts payable under the said sections in effect on the date the injured or deceased employee sustained his personal injury.*

Following the report of a special commission in 1912 the workmen's compensation system was provided as a complete optional voluntary system of compensation for injuries from industrial accidents, as a system of employee insurance *regardless of negligence,* with fixed rates of compensation in place of the common law, and other remedies for injury caused by negligence.

As the court in Royals Case, 286 Mass. 374 at 378:

"The workmen's compensation act was a new kind of legislation in this Commonwealth. It differed in almost every essential particular from existing equitable or common law remedies. It substituted an optional method of accident insurance with specified ranges of payments in place of common law rights and liabilities for large classes of employees and employers. It provided a procedure all its own."

And in Charon's Case, 321 Mass. 694 at p. 697:

"The amount of payments is fixed by the workmen's compensation act and is different from the measure of damages prevailing at common law."

The law is administered by the Industrial Accident Board. The Board is not a "court", but an administrative commission created, in part, to relieve the courts of congestion of cases growing out of the industrial relation and for this reason it is part of our system of administering justice as is the Appellate Tax Board which deals with tax appeals, formerly dealt with by the Superior Court.

While the Industrial Accident Board is an administrative commission and not a court, it deals with much that was formerly judicial business, with an appeal to the court of questions of law, as the court has said in Casier's Case, 286 Mass. 50 "its decisions partake of the nature of a court's decisions in their effect upon private rights." It is, therefore, in that sense a part of the system for the administration of justice and we have included the reports of its business as well as of the Appellate Tax Board, as part of the picture in our annual reports.

THE REPORT OF THE INDUSTRIAL ACCIDENT BOARD FOR 1950

This report received from the Secretary of the Board for 1950 is printed here (instead of in the appendix) as pertinent to the consideration of these bills, because it illustrates briefly, the magnitude of the compensation awards to which the bills would apply if enacted. The full report is as follows:

"January 1, 1950 to December 31, 1950

"During the year 1950, 256,808 reports of injury were filed with the Department. Of these 56,866 were injuries causing the loss of at least one day or one shift, 235 being fatal injuries, 32 permanent total disability; 1325 permanent partial disability, 32,681 temporary total disability with over seven days lost time, and 22,593 cases of one to seven days of temporary total disability.

"A total amount of $28,514,219.85 was paid out in compensation, medical and other statutory payments under the Workmen's Compensation Act. Insurers paid out $25,565,227.90; self-insurers paid out $1,789,769.14; and the governmental units which have accepted the provisions of the Act paid out $1,159,222.81."

DISCUSSION

The question of policy involved in the largely increasing compensation burdens upon industry through Workmen's Compensation insurance for the future is a matter for consideration by the legislature. The Judicial Council is not equipped for the general study of the system required by such a proposal. We merely call attention to the fact stated by the Council in 1932 in its 8th report

in connection with other matters (p. 727) that "the constant extension" of the application of the act was then "causing those familiar with the situation grave concern as to the future of Workmen's Compensation and its possible breakdown because of its increasing cost and its consequent burden on industry" as shown by an address in 1932 reprinted in part in the appendix to the 8th report pp. 97-100.

We limit our discussion to certain constitutional and other legal questions raised by the bills under the opinions of the Supreme Judicial Court and call attention to those opinions for the assistance of the legislature.

In view of the retroactive clauses in the bills as applied to existing contracts and to continuing future payments under earlier contracts since 1912 we call attention to the fundamental constitutional questions raised by those clauses.

As appears in the report of the Board for 1950, above quoted, $28,514,219.85 was paid in that year and most of it in the amount of $25,565,227.90 was paid by insurance companies under past or current annual contracts for the statutory benefits existing at the time of the injury, in consideration of premium rates based on those existing benefits. These annual contracts and rates do not cover the future increases in benefits provided by legislation after the contracts are made. It seems obvious that the legislature cannot impose increased liabilities which were not contracted for. The constitution of the United States provides that "No State shall pass any law impairing the obligation of contracts", Art. 1. Section 10. In *Hanscom* v. *Malden & Melrose Co.,* 220 Mass. 1 the court said (at p. 7).

> "The law as to the enforcement and effect of a contract at the time it is made cannot be changed to the detriment of either party. Such law enters into the terms of the contract and becomes a part of the obligation."

In the compensation case of *Beausoli* 321 Mass. 334 in 1947 the court said (at p. 348)

> "Upon the occurrence of an injury to the employed arising out of and in the course of her employment her rights to compensation and the obligation of the insurer to pay compensation were governed and fixed by the Act,—and these rights and obligations being contractual in nature could not be impaired by a subsequent statute."

And in *Mulligan* v. *Hilton,* 305 Mass. 5 (at p. 10)

> "a statute cannot constitutionally impose an obligation with respect to a transaction that at the time it took place gave rise to no obligation."

In *Wasser* v. *Congregation Agudath Sholom,* 262 Mass. 235 (at p. 237) the court in considering whether a statute as to insurance policies applied to a policy executed prior to the statute said:

"If the statute were framed to be applicable in words to a case like the present, it would be unconstitutional as impairing the obligation of contracts."

And in *Hanscom* v. *Malden etc. Co.* referred to above the court said that transferring property from one person to another "by pure fiat of the legislature" would be "contrary to the guarantees of both the State and Federal Constitutions. It would be taking property without due process of law."

See also *Ziccardi's* case 287 Mass. 588 (pp. 590-591).

We respectfully call these opinions to the attention of the legislature in connection with the retroactive clauses in the bills as applied to existing contracts and continuing future payments under earlier contracts since 1912 when the compensation act was passed.

The last sentence of H.925 seems also to raise serious possible legal questions, even assuming that the "fund" referred to would be sufficient to meet the demands on it which would seem likely to involve very large sums.

We do not recommend either of the bills and respectfully ask to be excused from making any further report.

H. 558, AS TO INTEREST IN WORKMEN'S COMPENSATION

(Referred by Resolves Chapter 13)

This bill provides

"Chapter 152 of the General Laws is hereby amended by striking out section 50 and inserting in place thereof the following section:—

"Section 50. Whenever there are one or more hearings on any question involving the compensation of an injured employee or his dependents, and the decision is in favor of the employee or his dependents, interest at the legal rate from the date such hearing was first requested to the date of payment shall be paid by the insurer on all sums due as compensation to such employee or dependents. Whenever such sums include weekly payments, interest shall be computed on each unpaid weekly payment."

Section 50 of Chapter 152 which the bill seeks to replace now reads:

"Sec. 50. Interest in Appealed Cases.—Whenever any question involving the compensation of an injured employee or his dependents is appealed to

the supreme judicial court, and the decision is in favor of the employee or his dependents, interest to the date of payment shall be paid by the insurerer, on all sums due as compensation to such employee or dependents. (1914, 708, s. 14.)"

We do not recommend H. 558 as drawn, but a majority of the Council submit a redraft, for the reasons hereinafter stated.

A note in 31 B.U. Law Rev. November 1951, p. 576 stated that:

"The entire field of workmen's compensation is a comparatively new phase of the law, and hence many segments of this field, including the allowance or disallowance of interest are still unsettled."

Cases from the various states are collected in a footnote in connection with this statement. See also Horovitz, "Workmen's Compensation" pp. 353-358.

A reason given in support of the bill is that since chapter 212 of the acts of 1946 as amended by chapter 244 of the acts of 1951, a plantiff in an action of law for personal injuries has been entitled to interest on the amount of the verdict from the date of the writ.

That provision relates to an action for damages based on the negligence of the defendant. Workmen's Compensation differs from such actions in that it does not provide a right against an employer for damages based on fault. The compensation law is a system of industrial accident insurance regardless of anyone's fault and exempts the employer from liabilities. Compensation claims must be approached, therefore, as the statute and the courts approach them, not as claims in tort but as solely contractual against an insurance company on an annual contract to pay specified benefits directly to the employee or his dependants who are the equitable beneficiaries of the insurance contract. See Gould's case 215 Mass. 480 and Johnson's case 242 Mass. at p. 494. It is like a life, or ordinary accident policy. All this is recognized by the court, as indicated elsewhere in this report, in the discussion of S.315 and H.925, by the statements in Royals case, 286 Mass. 374, at 388:

"The workmen's compensation act was a new kind of legislation in the Commonwealth. It differed in almost every essential particular from existing equitable or common law remedies. It substituted an optional method of accident insurance with specified ranges of payments in place of common law rights and liabilities for large classes of employees and employers. It provided a procedure all its own."

And in Charon's Case, 321 Mass. 694 at P. 697, the court said that "the amount of payments is fixed by the workmen's compen-

sation act *and is different from the measure of damages prevailing at common law.*"

It would seem that the contractual character of the system explains the lack of any provision for interest in the original act and, therefore, interest is not contracted for by the insurance policy except as specifically provided for in S. 50 (quoted at the beginning of this discussion) which H. 558 seeks to replace.

Interest on a debt after a demand is a part of the damages and not a separate matter. A writ is a demand. "Damages" as stated by Chief Justice Rugg in Fidelity & Casualty Co. v. Huse & Calton Inc. 272, Mass. at p. 456, "is the word which expresses in dollars and cents the original debt or damage and whatever interest ought to be added." So in death cases under G. L., Chapter 229 § 11 and personal injury cases *based on the fault of the defendant* under St. 1946, c. 244, the interest is part of the "damages." But the workmen's compensation "benefits" are not "damages" at all resulting from anyone's fault. The "fault" if any may have been that of the injured employee, but, if it was in the course of employment, he receives "compensation," without fault, as a *cost of the business.*

Interest, therefore, if provided for by statute would be an additional contractual burden to be covered only by future policies, although H. 558 is not so limited in its terms.

H. 558 applies only to compensation cases in which a hearing is requested and on all "sums due", including "weekly payments." Except by agreement, none of these "sums" seem due, or ascertainable until there is an award.

We understand that in the actual practice and handling of workmen's compensation cases, the vast majority of cases are assumed by the insurance carrier promptly and an agreement for compensation is entered into. Once an insurer has entered into such an agreement, it may not stop or suspend the payment of compensation no matter what evidence of justification they feel they have for doing so, unless the employee voluntarily signs an Agreement to discontinue the payments, actually returns to work, or by action of the Industrial Accident Board after an application made by the insurer or after a hearing and a decision by the Board.

Some cases are denied by the insurer and the burden is then on the employee to file his claim for compensation and make application to the Industrial Accident Board for a hearing. If such a claimant after hearing before the Industrial Accident Board should

win his case all past accrued compensation to the date of the decision is awarded. No interest is added or allowed. Ordinarily, there would be only a lapse of about 3 to 4 months from an employee's application for a hearing to the actual hearing of the case and a decision.

Sometimes after notice of denial of liability by an insurer, an employee may not act promptly in taking his case before the Industrial Accident Board or engaging counsel to do so. Such delay would be entirely in the control of the employee and not the insurer.

Sections 9A, 10, 11 and 11A of Chapter 152 (referred to in a footnote)* provide for physicians' and counsel' fees and "costs" only *under certain specified circumstances* to be covered by the insurance policy and Section 14 provides for costs in case of "frivolous appeals" "without reasonable grounds."

Mr. Horowitz, in his book above referred to, states (at p. 358) that:

> "The original Massachusetts compensation statute had no provision for interest. It was added three years later by St. 1914, Ch. 708, effective Oct. 1, 1914, now S. 50, G. L. (Ter. Ed.) Ch. 152. . . . It provides for interest "to the date of payment," but makes no mention as to when interest is to begin.
>
> With over 2,000 litigated cases every year before the Massachusetts Industrial Accident Board, and over 200 appealed to the Superior Court, it limits the payment of interest to those few cases in the Supreme Judicial Court, where the "decision is in favor of the employee or his dependents." "As about 25 cases reach that court annually and about three fourths of the boards' decisions in favor of the claimants are affirmed, the interest statute affects at most 20 cases a year. To limit such a narrow statute to interest only between the time of decree in the Superior and the time of payment is to decrease its value nearly to the zero point."

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* The following provisions are found in the Workmen's Compensation Law, General Laws Chapter 152, as to assessments against insurance companies:

Section 9A. Whenever a medical question is in dispute in any case and an impartial physician has not, prior to seven days before the date assigned for each hearing thereon, been appointed by the Department or a member thereof, the employee may engage his own physician, and one additional physician if the single member or the Department finds that justice and equity require the same, to appear and testify in his behalf, and if the decision of the single member or of the Department is in favor of the employee, a reasonable fee shall be allowed by the member or by the Department for the services of each such physician and shall be added to the amount awarded to the employee, and be paid by the insurer under the provisions of this Chapter;

Section 10. If a claim for a review is filed in any case and the Board by its decision orders the insurer to make or to continue, payments to the injured employee or claimant, the cost to the injured employee of such review, including therein reasonable counsel fees, shall be determined by the Board and shall be paid by the insurer;

Section 11. In rendering a decree (on appeal to the Superior or Supreme Court) under this Section or following a rescript of the Supreme Judicial Court after an appeal from such a decree, the Superior Court shall award costs to the prevailing party, to be taxed as in actions at law;

Section 11A. If the certification or appeal to the Superior Court is by the insurer, and the claimant prevails, the Superior Court, and, on further appeal, the single member, or full bench, shall allow the claimant, in addition to the award in the decree, an amount sufficient to relieve the employee of the reasonable cost of attorney's fees, briefs and other necessary expenses that result from the certificate or appeal.

H. 558 would apply to the 2000 or more litigated cases to which he refers.

As already pointed out, the cases *not litigated* are settled by agreement of the insurance companies without hearing. To what extent the figures are accurate today and in how many cases hearings are requested, to which H. 558 would apply, we do not know and we are not equipped to conduct an investigation into a business involving payments of millions annually as shown by the report of the Industrial Accident Board on p. 41 of this report.

If the legislature, as a matter of policy, decides in favor of adding liability for interest, after hearing, to be covered by future insurance policies, we think, as in other contractual relations, it should be limited to delay and failure to pay *when due.* We fail to see why interest should be added to weekly payments, when ordered, or agreed to, if they are paid when due. Without discussing further the question of legislative policy, a majority of the Council submits the following in place of H. 558. Judge Donahue dissents for reasons stated on p. 72 of this report and see report of Judge Cox, p. 78.

DRAFT ACT

Section 1. "Chapter 152 of the General Laws is hereby amended by inserting after section 50 the following section:—

"Section 50A. Whenever there are one or more hearings on any question involving the compensation of an injured employee or his dependents, and the decision is in favor of the employee or his dependents, interest at the legal rate from the date such hearing was first requested to the date of payment shall be paid by the insurer on all sums due as compensation to such employee or dependents. Whenever such sums include weekly payments, interest shall be computed on each unpaid weekly payment only from the date when according to the award each such payment should have been made."

Section 2. This act shall apply only to coverage assumed by the insurer after its effective date.

SENATE BILL No. 174 "AN ACT RELATIVE TO DERIVATIVE ACTIONS AGAINST CORPORATIONS, THEIR OFFICERS AND DIRECTORS."

(Referred by Resolves Chapter 26)

We do not recommend this bill.

Broadly stated, the bill forbids the bringing of minority stockholder suits and suits by policyholders of mutual insurance com-

panies representing less than 5% of any class of stock or stock worth less than $50,000, or, in the case of an insurance company, less than one-fifth of the members or holders of policies with a cash surrender value of less than $50,000, unless the plaintiffs "give adequate security for the reasonable expenses of the defendants . . . including attorneys' fees, incurred in connection with such suit." Statutes of New York, New Jersey, California and Wisconsin have been called to our attention in support of the bill.

The requirement of security is mandatory regardless of the merit of the plaintiff's claim.

Inasmuch as the proponents of this bill have urged that the defense of such cases has cost "about $150,000 in preparation and counsel fees," if such is to be taken as a typical case, obviously the requirement of adequate security would prevent the bringing of any of such suits except by plaintiffs of large financial resources.

The purpose of the bill, of course, is to prevent so-called "strike" suits. The actual effect of it would be to prevent all suits by interests less than the prescribed minimum, however meritorious.

We believe that there is little likelihood of many "strike" suits being brought in Massachusetts, since the decisions of our courts are extremely inhospitable to such litigation. The recent case of *S. Solomont & Sons Trust, Inc.* v. *New England Theatres Operating Corporation,* 326 Mass. 99 (decided June 7, 1950) held that

> "A minority stockholder of a corporation, even after unsuccessful application to its directors and stockholders seeking the bringing of a suit by it against one of its officers and directors to enforce a claim for alleged wrongs to it, cannot maintain a suit in equity against it and such officer and director to enforce such claim where a majority of the stockholders, not dominated by the individual defendant but independent and disinterested, and acting reasonably and in good faith, have voted that in their judgment it is not in the best interest of the corporation to attempt the enforcement thereof."

This rule was applied by the United States District Court in the case of Pomerantz v. Clark, 101 F. Supp. 341, (decided Nov. 30, 1951) to suits by policyholders of mutual life insurance companies.

In our opinion the law, as thus laid down, is a sufficient and proper safeguard against the bringing of non-meritorious suits by small stockholders or policyholders*.

* For a recent note on defences in Derivative Suits see 66 Harvard Law Rev. No. 2, Dec., 1952, p. 342. See also 62 Yale Law Journal No. 1, Dec. 1952, p. 84.

H. 1768, RELATIVE TO THE ENFORCEMENT OF FOREIGN ALIMONY DECREES

(Referred by Resolves Chapter 18)

This bill provides—

"Chapter 208 of the General Laws is hereby amended by inserting after section 29 the following new section:—

"Section 29A. If, after a divorce has been decreed in another jurisdiction, the parties thereto are inhabitants of or residents in this commonwealth, the superior court or probate court for the county in which either may be an inhabitant or resident, shall have the same power, upon the petition of either party, to make, revise and alter decrees relative to alimony, and to enforce said decrees as if the divorce had been decreed in this commonwealth."

The purpose of this bill is to authorize the court not only to enforce decrees for alimony made by a court in another state in which the divorce is granted, but also "to revise and alter" such decrees, as the court may do when a Massachusetts divorce and alimony is granted. The bill is drawn as a new section 29A of chapter 208 of the Gen. Laws, obviously because section 29 already authorizes the court in dealing with the "care, custody, education and maintenance" of children of the parties to a foreign divorce, not only to "make" but to "revise and alter such decrees or make new decrees as if the divorce had been decreed in this commonwealth."

The present statutes about alimony, so far as pertinent to this bill, appear in chapter 208 as follows:

"Section 34. Alimony. Upon a divorce, or upon petition at any time after a divorce, the court may decree alimony to the wife, or a part of her estate, in the nature of alimony, to the husband."

Section 35 (as amended by St. 1950, c. 57) reads:

"The court may enforce decrees, *including foreign decrees*, for allowance, alimony or allowance in the nature of alimony, in the same manner as it may enforce decrees in equity."

The amendment of 1950 inserted the words "including foreign decrees" following the decision of the case of Seltman v. Seltman, 322 Mass. 650. So the courts may now enforce a foreign decree for alimony, but there is no specific provision for revising or altering a foreign alimony decree, as there is in the matter of support of children in Section 29 above quoted.

As to a Massachusetts proceeding, Chapter 208 provides:

"Section 37. After a decree of alimony or an annual allowance for the wife or children, the court may from time to time, upon petition for either party,

revise or alter its decree relative to the amount of such alimony or annual allowance and the payment thereof and may make any decree relative thereto which it might have made in the original suit."

See Watts v. Watts 314 Mass. 129 and Ziegler v. McKinley 318 Mass. 765 at p. 767. Oakes v. Oakes 266 Mass. 150 at p. 152.

We think there should be such a provision as proposed by H. 1768, as justice may require a revision or alteration of foreign alimony or allowance in the nature of alimony as it may of Massachusetts alimony if it is to be enforced in Massachusetts.

The jurisdiction of the Massachusetts Court under Section 29, above quoted, as to custody of children and under a foreign divorce decree was sustained under the "full faith and credit" clause of the Federal Constitution, in Heard v. Heard, 323 Mass. 357 at pp. 371 to 374. The court following the case of New York v. Halvey 330 U. S. 610, said (at p. 374)

> "Under the laws of Nevada the decree in question was not irrevocable but was subject, *as are such decrees in most jurisdictions to be modified for good cause.—What the Nevada court could do, the court below could do. See G. L. (Ter. Ed.) C. 208, §§ 28, 29.*"

The law of some twelve states is discussed in an article on "Enforcement of Foreign Alimony and Support Orders" in XXXIV Mass. Law Quarterly, No. 4, October 1949, pp. 9-22.

We recommend the following as Section 35A instead of 29A:

DRAFT ACT

Chapter 208 of the General Laws is hereby amended by inserting after section 35 the following new section:

Section 35A. If, after a divorce has been decreed in another jurisdiction, the parties thereto are inhabitants of or residents in this commonwealth, the superior court or probate court for the county in which either may be an inhabitant or resident, shall have the same power, upon the petition of either party, to make, revise and alter decrees relative to alimony or allowance in the nature of alimony, and to enforce said decrees as if the divorce had been decreed in this Commonwealth.

CONCURRENT JURISDICTION OF THE SUPERIOR COURT

As stated in our 27th report after about 20 years of discussion, the legislature, following an earlier recommendation of the Council, by St. 1939, c. 257 extended the concurrent jurisdiction of the Superior Court to include various matters formerly in the "original

and exclusive" jurisdiction of the Supreme Judicial Court. The purpose of the act was to relieve the Supreme Judicial Court of work which interfered with its appellate work and could be properly dealt with in the first instance by the Superior Court.

Since 1939 a number of statutes have been passed providing for enforcement by a court and the Supreme Judicial Court is mentioned without a provision for concurrent jurisdiction of the Superior Court. For instance section 77 of chapter 130 inserted by St. 1941, chapter 598 s. 1, relates to enforcing rules as to pollution of shell fish against cities and towns. We see no reason why this sort of thing should be loaded on to the Supreme Court. We submit that the policy of protecting the time and strength of the court of last resort for the adequate performance of its appellate work, is sound and in the public interest.

It is, of course, easy, in the midst of many legislative questions to overlook the need of providing for concurrent jurisdiction in order to maintain this policy and, to guard it in future we suggested a general provision in the chapter 4 of the General Laws, containing definitions. We recommend the following:

DRAFT ACT

Chapter 4 of the General Laws is hereby amended by inserting at the end of Section 7, the following new clause.

Supreme Judicial Court—When to have Concurrent Jurisdiction—Words conferring original jurisdiction or jurisdiction of appeals from an administrative board or officer on the Supreme Judicial Court shall be held to mean concurrent jurisdiction with the Superior Court unless it is expressly provided that such jurisdiction of the Supreme Judicial Court is to be exclusive.

H. 1509—THE "UNIFORM ENFORCEMENT OF FOREIGN JUDGMENT ACT."

(Referred by Resolves Chap. 27)

This is a bill of nineteen sections. While introduced on petition of an individual, we find that it is the same draft act approved by the National Conference of Commissioners on Uniform State Laws and printed with annotations to the various sections in the 1948 "Handbook" of the conference (pp. 156-162).

As any proposals of the National Conference deserve respectful and careful consideration and as several proposed "uniform" acts have been referred to the Judicial Council for reports in previous

years, the last one in 1944, we think a brief account of the Conference and its purposes and the approach of the Council to their consideration hitherto followed, should be restated before discussing the present bill (H.1509).

In the 14th report of the Council in 1939 (24 M.L.Q. No. 1, pp. 32-33) in connection with a proposed "uniform act".

"This National Conference, since 1912, has been composed of representatives from all the states and territories, the District of Columbia, Puerto Rico and the Philippine Islands. During this period they have rendered notable service in the preparation of a variety of acts, many of which have been adopted in different states and one of them, the negotiable instruments act, in 53 jurisdictions. The other acts are listed in the 'Handbook' of the Conference for 1937, pp. (415-434) with the states in which, and the dates when, they were adopted. The acts "declared obsolete, superseded or withdrawn" are listed on pp. 413-414.*

"The original object of the National Conference, as stated in its constitution, was 'to promote uniformity in state laws on all subjects where uniformity is desirable and *practicable*.' At the meeting of the conference in Boston in 1936, this description of its object was amended to read as follows:

'(1) to promote uniformity in state laws on all subjects where uniformity is deemed desirable and *practicable*;

'(2) to draft model acts on (a) subjects suitable for interstate compacts, and (b) subjects in which uniformity will make more effective the exercise of state powers and promote interstate cooperation; and

'(3) to promote uniformity of judicial decisions throughout the United States.' (See 1936 "Handbook," p. 372.)

"The history of the National Conference and its work and the variable extent to which the different acts drafted by it have been adopted in the states, with the exception of the negotiable instruments act already referred to, demonstrate the fact that these acts are submitted, as indicated in the amended statement of the object of the conference above quoted, as 'model' acts similar to the model 'code of criminal procedure' prepared a few years ago by the American Law Institute—another professional organization with nation-wide representation which is co-operating with the National Conference in regard to some matters. Obviously the primary reason for uniform laws is to remove confusion and error in matters which have an interstate play, such as commercial law, interstate rendition, conflict of laws and the like, but this primary reason fails when the subject of a proposed model law is one preponderantly of domestic concern intensively developed by judicial precedent, rather than by statute, so that an attempt at statutory codification would cause, rather than remove, confusion, error and the grounds of unnecessary litigation."

* Other acts have been proposed since 1939.

In its first report in 1925 the Judicial Council said in discussing a "uniform" proposal (at p. 35) that the subject of "Court procedure seems to us peculiarly one for local experiment in convenience and effectiveness." This remark was repeated in the 3rd report (pp. 65-6). It was also referred to in 1926 by Prof. Edson R. Sunderland of Michigan in his account of the hundred years of "English Struggle for Procedure Reform" (39 Harvard Law Review, 744-5) where he said:

> "The judicial decentralization based upon the independence of our State governments develops a definite interstate competition in procedure law. All our States have similar problems which are met in different ways. Successes in one State are imitated in others, failures are avoided. The probability of the accidental emergence of an improvement in procedure is multiplied by forty-eight and once having appeared in any State it becomes an object of interest in all the rest.—The whole country is a laboratory in which experiments are being actively conducted. Nothing can halt the stimulative process except the standardizing of procedure through uniform legislation. It is sincerely to be hoped that this movement will not extend into the procedural field. It will destroy the most promising possibility for the general improvement of American procedure. Court practice, says the Judicial Council of Massachusetts in a recent report, is peculiarly a subject for local experiment in convenience and effectiveness, and the States should not be hampered by uniform laws." Compare Sunderland's article, 12 M. L. Q. No. 1, Nov. 1926.

This does not mean that the efforts of the National Conference on "Uniform" laws in the procedural field are not helpful. It merely means that, especially in matters of procedure, the proposals should be studied as *model,* rather than "uniform" acts.

This is particularly true of an old state like Massachusetts. Proposed "uniform" acts which may well be adapted to conditions of practice in many states may not be in Massachusetts, as the Council has pointed out in its 6th report. p. 54; 14th report, p. 32; 19th report, p. 27; 20th report pp. 57 and 61.

Coming to H.1509, the "Prefatory Note" of the Commissioners to the draft act in the "handbook" of the conference for 1948 contains the following paragraph:

> "The mobility, today, of both persons and property is such that existing procedure for the enforcement of judgments in those cases where the judgment debtor has removed himself and his property from the state in which the judgment was rendered, is inadequate. By this act procedure is made available under which the judgment creditor can effectively obtain relief and at the same time adequate protection is given the judgment debtor to present any defense that can now be interposed to an action on such judgment."

Having considered the proposed act and the annotations to the various sections containing the reasons for them, we do not recom-

mend its passage in Massachusetts, however much it may be needed in other states in which the procedure and practice is less favorable to the foreign judgment holder than it is in Massachusetts. Ever since the beginning of the 19th century, and, especially, since the opinion of Chief Justice Shaw in 1842, in Gleason v. Dodd (4 Met. 333) judgments of courts from other states, under the "full faith and credit" clause of the Federal Constitution, have been readily collectible from a defendant if worth suing, and, with our freedom of attachment of property, and judgment against the property if the defendant is not within reach of service, they have, we believe, been more readily collectible than in most, if not all, of the other states.

In other words, in our opinion, Massachusetts provides today the substance of the proposed act and the adoption of the act would cause confusion, inconvenience and the unnecessary clerical work involved in two parallel systems of procedure without helping the foreign creditor. The purpose of section 7 of the bill to provide for a "new personal judgment" in this Commonwealth without delay, can be accomplished more simply, with less statutory change, by the adoption of the act which we recommend elsewhere in this report, for judgment in cases in which there are no disputed facts. That act, as drawn, applies to actions of "contract" (see p. 31) which, under our statute G. L. chap. 231, s. 1 and c. 235, s. 19 includes actions on judgments and seems peculiarly adapted to such actions, as the foreign judgment, if properly authenticated, cannot be attacked if the court in which it was rendered had jurisdiction.

S. 199 (OF 1951) AS TO WITHDRAWAL OF PLEAS OF GUILTY

(Referred by Resolves of 1951 chapter 85)

This bill (S. 199 of 1951), as amended in the Senate, provides

"Chapter 277 of the General Laws is hereby amended by adding at the end the following section:—

"Section 80. Any defendant shall have the right at any time before the imposition of a sentence or fine or before other final disposition is made on any complaint or indictment returned against him and to which he has entered a plea of 'guilty' or 'nolo contendere,' to withdraw such plea and substitute therefor a plea of 'not guilty'."

Amended by the Senate April 2, 1951 (see Journal) by adding

"Any previous plea of guilty so withdrawn shall not be commented upon nor be admissible as evidence against him in the trial of such case, or in any subsequent trial or proceeding based on the same complaint or indictment."

We do not recommend this mandatory bill because it would be impracticable, would seriously interfere with the administration of the criminal law, cause great confusion in the application of the whole system of probation, and injustice and difficulties to many defendants. The courts now have authority to allow a change of plea for good cause.

In Com. v. Marino, 254 Mass. 533 the court said (p. 535),

> "Whether the plea entered and accepted by the court could be withdrawn and a different plea entered rested in the sound judicial discretion of the court. There is no doubt that if the plea is entered by mistake or by inadvertence, or by an attorney without authority, the court in its discretion may permit it to be withdrawn and allow the defendant to plead anew. Commonwealth v. Winton, 108 Mass. 485. Commonwealth v. Crapo, 212 Mass. 209."

As practical illustrations of the troubles which would be caused for the courts, the probation officers, and the defendants we call attention to the following samples which could be multiplied indefinitely in other directions.

In the administration of probation in the District Courts, many cases are continued in the care of the probation officer after pleas of guilty sometimes for a year or more with the understanding that at the end of the period of continuance the case will be dismissed. Many of these are larceny cases arising from bad checks or other business transactions in which the cases are continued for the purpose of effecting restitution. It would seem incongruous for a case of this character to be continued for several months, partial restitution made and turned over to the complainant and then allow the defendant as a matter of right to plead not guilty. The same situation would result if the defendant were placed on probation without a suspended sentence.

Another very common situation is non-support of wife and children or an illegitimate child which, commonly, are continued on long periods of probation ordinarily with an order of payment. It would be most confusing to the administration of justice to allow a defendant in one of these cases after a period of some years to come in and plead not guilty. Furthermore, in all cases which are continued for disposition or placed on probation for any considerable period of time it is often difficult to secure the presence of witnesses who have moved perhaps outside the Commonwealth. To allow a recalcitrant probationer who has already pleaded guilty and abided by the terms of his probation for some period to change his plea to not guilty as a matter of right, might well result in the courts declining to continue the case for disposition as above

outlined or placing defendants on simple probation resulting in a sentence or a suspended sentence in each case where a continuance for a certain period or simple probation might well be used. This, of course, would not be helpful to a defendant.

Furthermore, the phrase "other final disposition" is ambiguous. While a defendant is on probation, with or without a suspended sentence in a District Court, there is no final disposition of the case and as pointed out above, if a defendant were allowed as a matter of right to change his plea during his probation, it would result in great confusion particularly in the Probation Department and would entail additional work and expense for the court without any benefit to the defendant if he were ultimately found guilty as might generally be the case after a former plea of guilty.

We have a letter from a chief probation officer, of the Superior Court from which we quote as follows:—

> "Take the case of a defendant in an illegitimacy case who upon arraignment entered a plea of guilty. The natural consequence of that plea is for the court to make a finding of guilty and further to make an adjudication of paternity of the child. The usual disposition is to place the putative father upon probation for a period of six years. The court would also order the putative father to contribute to the support of the child. If S. 199 were enacted into law it would be possible at any subsequent date for the putative father to return to the court and exercise his right to retract his plea of guilty and substitute therefor a plea of not guilty. As a result, the adjudication would be vacated and arrangements made to give the defendant a trial. This may place an unjust and a tremendously unfair responsibility upon the mother in her efforts to prosecute her complaint. If there was a long period of time between defendant's arraignment and subsequent trial the complainant may have difficulty recalling dates, places, etc. which should be introduced as evidence sufficient to convict. Persons who may have been available as witnesses for the complainant may not be available at the time of delayed trial.
>
> "We could offer many cases as examples of the impracticality of S. 199."

H. 447 RELATIVE TO ESTABLISHING A COURT OF CLAIMS AND GENERAL WAIVER BY THE COMMONWEALTH OF IMMUNITY FROM SUIT

(Referred by Resolves chapter 15)

The subject matter of this resolve is a request

"to make an investigation and study relative to the establishment of a court of claims with jurisdiction over claims against the commonwealth on which the commonwealth is presently im-

mune from liability because of its sovereign power" and "the advisability of the commonwealth waiving said immunity from liability and the advisability of permitting any person to maintain an action before said court of claims which could be maintained in any court in the commonwealth if the commonwealth were not a sovereign power."

This request presents two separate problems. *First,* as to a court of claims—we do not recommend the creation of such a tribunal whether the immunity is extended or not. Chapter 258 of the Gen. Laws provides the Superior Court with jurisdiction of such claims against the commonwealth as to which immunity has been waived. Special procedure is provided therein. The general scope of such claims has been explained by the court in Murdock Parlor Grate Co. v. Com. 152 Mass. 28 and Chilton Club v. Com. 323 Mass. 543. Claims "for negligence or misfeasance of servants of the state engaged in purely public duties of administering its government" are not included. See 323 Mass. at p. 545. It would be a mistake, in our opinion, to multiply courts by creating a separate "court of claims".

Second, as to the general waiver of immunity, this matter was discussed for the information of the legislature in our 22nd report (32 M.L.Q. No. 1 March 1947, pp. 51-52). Reference was made to the statutes in New York, Michigan, California and Washington, to the Federal Tort Claim Act of 1946 and various discussions of the subject including the two opinions in Great Northern Insurance Co. v. Read, 322 U.S. 47 and 59. The practical question of policy involved is, as suggested in the majority opinions at pp. 53-54, how far the state should be protected "from unanticipated" and possibly "crippling interference" with the process of government. On this question the Council expressed no opinion or recommendation as it is a general question of policy involving large and uncertain public cost and possible interference with the budget and other financial operations. Accordingly the Council simply called to the attention of the legislature for its consideration certain aspects of the problem as follows:

> "In answer to all that may be said in favor of a general waiver of government immunity in tort it is said that, as a practical matter, in these days of claim-mindedness and demands on the public treasury in every direction, the Commonwealth needs the protection of immunity in tort. The old 'snow and ice' cases against cities (when they were liable) and the multiplication of claims under the compulsory motor vehicle insurance act indicate what is likely to happen if the Commonwealth opens up its treasury to actions of tort of all kinds.

"Whether it is logical or not, the present not uncommon practice of protecting a public employee who is sued, from loss in deserving cases, provides the Commonwealth with some protection against large numbers of claims of every variety."

We simply call attention to what was said in that report and, respectfully ask to be excused from making any recommendation as the question of policy involved seems beyond the province of the Council.

HOUSE 1781 RELATIVE TO TRUSTS

(Referred by Resolves chapter 5)

This bill provides

"Chapter 190 of the General Laws is hereby amended by inserting after section 1 the following section:—

"Section 1A. The surviving spouse of any person who has created a trust of personal property, if the person creating the trust had the right to any income therefrom or the power of revocation thereof or any control over the trust property, may within one year after the death of such person, petition the probate court, after notice to all interested persons, to take over the trust property, and the surviving spouse shall have the same rights in the estate of the deceased as if the person creating the trust had died seized of the trust property intestate. No other person entitled to any rights under the estate of the deceased shall have any claim to such trust property. The court, after disposing of such part of the trust property as may be necessary under the provisions of this section, shall order that the trust be reinstated as nearly as may be, to its original terms."

We do not recommend this bill.

It would not only cause much complication and confusion and invite or require family controversies and litigation loading the probate courts with such controversies, but would interfere, by wholesale and in an unwarrantable manner, with a man's right to dispose of his own property as he deems best with his knowledge of his family affairs and his wishes in regard to those for whom he provides by creating such a trust as is described in the bill.

As we stated in our 26th report in 1950 pp. 27-28 in regard to another bill which was referred to us, the policy of the statutes which provide the rights of a surviving husband or wife has been to protect the right of a person "to control the disposition of his or her property . . . in accordance with his or her wishes except so far as public policy steps in to prevent dependency of the survivor on the public or others" and, as in the case of wills, "the inten-

tions of a person . . . have always been given primary consideration in Massachusetts."

We also stated that

> "There appear to be a variety of reasons today for the continuation of the policy, such as the fact that the survivor may have ample independent property, or may be separated because of his or her fault, or may be disreputable or alienated for some reason or other, or may be apparently, but not legally, divorced under the varied and confusing divorce laws of different states, or other reasons known to the deceased."

All this applies to trusts referred to in the bill as well as to wills.

H. 1520 AS TO DRAWING DOCUMENTS INVOLVING REAL PROPERTY

(Referred by Resolves C. 16)

The bill provides

> "Every document used in connection with a transaction involving real property shall be drawn by an attorney at law or by a person whose signature is a necessary part of such document. A person so drawing a document as hereinbefore described shall affix his name and address to the said document. Failure to comply with the provisions of this act shall be punishable by a fine of dollars."

We do not recommend the bill. It would make it a crime for a lawyer or a landowner to draw a deed or other document about land without putting his name and address on it. It would also raise the question whether such a deed involving a crime could be recorded, and even whether it was valid if it failed to "comply" with the act. Under this bill a grantor could draw a deed but a grantee could not. It would preclude a friend or relative of a party to a document from preparing a simple deed, lease, or extension or discharge of a mortgage in the event of the illness of such party, unless such friend or relative were a member of the bar. Every paper filed in the Land Court would have to "comply" with the bill.

For generations law stationers have carried printed forms of deeds, mortgages, purchase and sale agreements and other forms relating to land. Since the "short form of deeds" act of 1912 the statutes have contained abbreviated forms for anybody's use.

The word "document" is an extremely broad term which covers any writing or instrument conveying information, extending even

to letters, which may be used as evidence to prove a fact. The term "transaction" is perhaps, even broader and more general than the word "document" and "transactions involving real property", in connection with which "documents" are prepared, could be so multitudinous and varied as to defy enumeration.

The phrase "transaction involving real property" is of almost unlimited application when contrasted with the mere *transfer* of real property. Under such a provision the right of a janitor to give a receipt for rent which he collects, might well be challenged, because a rent receipt may well be a document used in evidence to prove a fact and certainly such a transaction involves real property. The right of an auctioneer to prepare a memorandum of sale to satisfy the Statute of Frauds might also be seriously questioned.

While it may be wise for people to consult lawyers about deeds and other instruments, they should not, and probably cannot, be legally forced to.

Failure to meet the requirements of such a law as is proposed would probably result in litigation in which many ordinary every day transactions would be attacked as "illegal".

HOUSE 959 AS TO RECORDING OF DEEDS REFERRING TO PLAN

(Referred by Resolve c. 45)

This bill provides

"Chapter 183 of the General Laws, as amended, is hereby amended by inserting the following section:—

"Section 29A. Recording of Deeds referring to a Plan.—No deed shall be recorded which makes reference to a plan dated after January first, nineteen hundred and fifty, unless said plan is already on record or is recorded therewith."

We do not recommend this bill. It is another proposal to regulate, by wholesale rules, the very varied work of dealing with land. Such proposals not only tend to increase the problem and expense of title examination but tend to complicate unforeseen facts relating to titles and land ownership.

We appreciate that the purpose of the bill is to supplement and improve the recording acts as to future plans. Of course, unrecorded plans may raise problems for title examiners as they have in the past, but this bill would seem to prevent a man from selling his land even if the description was sufficient without a plan, if

the deed referred in any way to some future unrecorded plan and the buyer was willing to take the title.

H. 1754 RELATIVE TO PERJURY

(Referred by Resolves C. 34)

This bill entitled "Relating to certain changes in the law relating to Perjury" provides

"Chapter 268 of the General Laws is hereby amended by inserting after section 6 of said chapter the following sections:—

"Section 6A. In any prosecution for perjury the falsity of the testimony or statement set forth in the indictment or information shall be presumptively established by proof that the defendant has testified, declared, deposed or certified under oath to the contrary thereof on any occasion in which an oath is required by law in any other written testimony, declaration, deposition, certificate, affidavit or other writing by him subscribed or in any testimony given in any action or special proceeding.

"Section 6B. An indictment or information for perjury may allege the making of contradictory testimony or statements under oath on occasions in which an oath is required by law without specification of which thereof is true; and the perjury may be established by proof of the wilful giving or making of such contradictory testimony or statements without proof as to which thereof is true.

"Section 6C. An unqualified statement of that which one does not know as to be true is equivalent to a statement of that which he knows to be false."

We do not recommend the bill.

The bill would provide a statutory criminal presumption of perjury for every person who makes a statement which he honestly believes to be true and later corrects when he finds he was mistaken and would ignore long experience with the memories of witnesses, as well as modern changes in the applicability of the "penalties of perjury." In 1926 Massachusetts took the lead in checking the constantly accumulating requirement of perfunctory oaths which diluted the practical force of an oath. Thousands of such perfunctory oaths to income tax returns, applications for automobile licenses, etc., were eliminated but the "penalties of perjury" to such unsworn statements is retained. The act of 1926 as amended and extended by Chapter 106 of 1947 (G. L. c. 268, s. 1A) provides:

"No written statement required by law shall be required to be verified by oath or affirmation before a magistrate if it contains or is verified by a written declaration that it is made under the penalties of perjury. Whoever signs and issues such a written statement containing or verified by such a written

declaration shall be guilty of perjury and subject to the penalties thereof if such statement is wilfully false in a material matter." Approved February 28, 1947.

Under this broadened act, even answers to written interrogatories in civil cases may be answered in writing under "the penalties of perjury" without an oath. They may not be prepared or read over by the client with care before signing. Many a client probably thinks it is merely a routine paper which he is told to sign. But under the proposed bill (H. 1754) if he later tells the truth on the stand he might be presumed to have committed perjury because he signed something that he did not fully understand. It may be very different from swearing to one thing before a grand jury and another thing before a trial jury. Most of the rules of evidence have been gradually developed in the light of experience by judicial decision. The law of proof in perjury cases is stated in Commonwealth v. Gale, 317 Mass. at pp. 277-8 and Com. v. Pine, 321 Mass. 299 at p. 302. The history of the subject appears in Wigmore's "Evidence" 3rd ed. Vol. VII, ss. 2040-2044. And see Com. v. Parker, 2 Cush. 212 at p. 222. We think the rule of proof in perjury cases should be left to judicial decision as heretofore.

HOUSE 663, RELATIVE TO NEGOTIABLE INSTRUMENTS

(Referred by Resolves, Chapter 29)

This bill to amend Section 79 of Chapter 107 of the General Laws, is entitled,

"An act to make more uniform the Law with respect to Notice of Defects in title to certain negotiable instruments issued by corporations."

Section 79 of chapter 107, which the bill seeks to amend, has been on the statute book ever since 1896 as part of the "Uniform Negotiable Instruments" act, the first of the "Uniform" acts adopted in all the states. It reads:

"S. 79. Notice of Defect in Title.—To constitute notice of an infirmity in the instrument or defect in the title of the person negotiating the same the person to whom it is negotiated must have had actual knowledge of the infirmity or defect, or knowledge of such facts that his action in taking the instrument amounted to bad faith."

To this section the bill proposes an addition as follows:

"Chapter 107 of the General Laws is hereby amended by adding at the end of section 79, as appearing in the Tercentenary Edition, the following:—; but the drawing or making of a check or other negotiable instrument by an officer

or agent of a corporation against the account of or in the name of such corporation, to himself *or his personal creditor* as payee, or endorsement of a check or other negotiable instrument in the name of such corporation, to himself *or his personal creditor* as endorsee, and in *any such* case, the cashing of such check or other negotiable instrument *or the credit thereof on or to* his personal account, and whether such check or other negotiable instrument is drawn against an account standing in the name of such corporation, or in the name of such officer or agent of such corporation as such, shall not be sufficient to put *the drawee or payee* on inquiry as to the authority of such officer or agent or impute the knowledge of any infirmity or defect in such check or other negotiable instrument, *and so far as the drawee is concerned,* provided *it has* on file an authorization from said corporation showing that the said officer or agent is authorized on behalf of the corporation to perform any of the above acts for *unspecified or limited* amounts, and that the amount of the said check or negotiable instrument does not exceed the maximum limits of the amount so contained in the authorization so filed for the said officer or agent when such a limitation is contained therein."

The title of H. 663, above quoted, seems mistaken in describing the bill as one to "make more uniform the law." In fact it would make the law less "uniform". Much of the bill is copied from a New York statute (chap. 473 of 1927, printed below in a footnote). This New York act amended and broke the previous uniformity of this section of the "negotiable instruments act" by adding the long specification, contained in it which relates specially to banks as indicated in *italics.** A comparison of the words printed in *italics* above in H. 663 and the words printed in *italics* in the New York act in the footnote will show how much broader H. 663 is than the New York act.

The "negotiable instruments act" together with the "sales" act, the "warehouse receipts" act and all other "uniform" commercial acts have been the subject of intensive study, for the past four or five years, by the American Law Institute and the National Conference of Commissioners on Uniform State Laws, working jointly.

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* The New York, Section 95, which was exactly like our Section 79, above quoted, was amended in 1927 by adding thereto the following:

"But the drawing or making of a check or other negotiable instrument by an officer or agent of a corporation against the account of, or in the name of such corporation, to himself as payee, or the endorsement of a check or other negotiable instrument in the name of such corporation, *to himself as endorsee,* and *in either case* the cashing of such check or other negotiable instrument *or the deposit thereof* to his personal account, and whether such check or other negotiable instrument is drawn against an account standing in the name of such corporation, or in the name of such officer or agent of such corporation as such, shall not be sufficient to put *a bank, banker or trust company* on inquiry as to the authority of such officer or agent, or impute knowledge of any infirmity or defect in such check or other negotiable instrument, provided *such bank, banker or trust company* have on file an authorization from said corporation showing that the said officer or agent is authorized on behalf of the corporation to perform any of the above acts for *unlimited or limited* amounts, and that the amount of the said check or negotiable instrument does not exceed the maximum limits of the amount so contained in the authorization so filed for the said officer or agent when such a limitation is contained therein." Negotiable Instruments Law, § 95, as amended by Laws 1927, c. 473. See "Uniform Laws Annotated" 5, Pt. 2, § 56 and note p. 121 Section 79 of Massachusetts and Section 95 of New York before amendment were both Section 56 of the "Uniform" Act as submitted to the States by the National Conference.

This work by experienced lawyers and judges throughout the country resulted, last May, in the final joint approval of a new "Uniform Commercial Code" which will be submitted to the states in the near future. In this "code" the section quoted above as sec. 79 of chap. 107, has been revised and appears as section 3-304 (2) on pp. 330-331 as follows:

> "The purchaser has notice of a claim against the instrument when he has reasonable grounds to believe . . .
> (b) that a fiduciary has negotiated the instrument in payment or a security for his own debt or in any transaction for his own benefit or otherwise in breach of a duty."

The latest case under sec. 79 appears to be Gramatan National Bank & Trust Co. v. Moody, 326 Mass. 367 decided in November 1950. The court after quoting section 79 said, quoting Mr. Justice Dolan in Macklin v. Macklin,

> " 'The rights of a holder of a negotiable instrument are to be determined by the simple test of honesty and good faith, and not by a speculative issue as to his diligence or negligence.' Macklin v. Macklin, 315 Mass. 451, 455.

In the Macklin case the court said that "bad faith" was a question of fact in each case. See also Boston Note Brokerage Co. v. Pilgrim Tr. Co., 318 Mass. 224 and a note with many cases on pp. 227-228. These opinions seem to indicate that the general rule today in Massachusetts may be substantially in accordance with the revised provision above quoted from the Commercial Code See also Scott "Trusts" s. 324.4.

We have explained these facts for the convenience of the legislature in considering H. 663, as it would seem to be a mistake to complicate a brief general rule intended to apply to many different facts by specifying one set of facts, broader than the New York act and still further upsetting the general policy of uniformity in *commercial* law. With the proposed "Commercial Code" approaching and dealing with the subject matter in a "uniform" clause as above stated, it would seem advisable to consider that form of clause when it appears.

We do not recommend the bill.

H. 1772 RELATING TO THE MEANING OF THE WORDS "BLOOD ISSUE" AS APPEARING IN WILLS

(Referred by Resolves Chapter 23)

This bill reads:

"Where the words 'blood issue' appear in any will duly probated, such words shall mean legitimate issue, or illegitimate issue where a court of the commonwealth has decreed a person to be the father, or where a child has been acknowledged as theirs by the father and mother, though born out of wedlock. Unless it is expressly stated in the will to exclude, the latter two classifications shall take only where actual distribution has not been made to persons otherwise entitled thereto."

We do not recommend the bill.

G. L. Chapter 190 Sec. 5, 6 and 7 as amended now provides—

S. 5. "Illegitimate Child to be Heir of His Mother.—An illegitimate child shall be heir of his mother and of any maternal ancestor, and the lawful issue of an illegitimate person shall represent such person and take by descent any estate which such person would have taken if living."

S. 6. "Mother to be Heir of Illegitimate Child.—If an illegitimate child dies intestate and without issue who may lawfully inherit his estate, such estate shall descend to his mother or, if she is not living, to the persons who would have been entitled thereto by inheritance through his mother if he had been a legitimate child."

S. 7 (as amended). "When Illegitimate Child to Be Deemed Legitimate—An illegitimate child whose parents have intermarried and whose father has acknowledged him as his child or has been adjudged his father under chapter two hundred and seventy-three shall be deemed legitimate and shall be entitled to take the name of his parents to the same extent as if born in lawful wdlock."

The latest extended discussion of the present law as to this subject appears in Fiduciary Trust Co. v. Mishou, 321 Mass. 615 at pp. 634-636. As there stated (p. 635),

"The word issue in a Massachusetts will must be interpreted against a background of statutory phraseology and construction which has remained wholly consistent for well over a century. It is provided by G. L. (Ter. Ed.) c. 4, s. 7, Sixteenth, that in construing statutes unless a contrary intention clearly appears 'Issue,' as applied to the descent of estates, shall include all the lawful lineal descendants of the ancestor."

The court then cites other statutes and decisions illustrating the history of the law in Massachusetts and elsewhere. It is for the legislature to consider the question of policy whether the long established rule should be changed in favor of illegitimate children and grandchildren and later illegitimate descendants as to future

wills. For the assistance of the legislature we simply call attention to fact that the change would cause confusion as to "the meanings of words which have long been established and accepted and in reliance upon which wills have been drafted and settlements of property effected" (see p. 636). The established meaning thus generally understood seems likely to be relied on for a long time to come so if the change were made the intention of future testators would also be defeated or rendered uncertain by facts unknown to them or their families and the courts would be congested with much family litigation in many ways.

PRIVATE CONVERSATIONS BETWEEN HUSBAND AND WIFE IN PROCEEDINGS CONCERNING PROPERTY

In 1873 in the case of Jacobs v. Hessler, 113 Mass. at pp. 159-160 the following facts appeared in a case in which a widow sought to establish a trust—

"The case was referred to a master to hear the parties, find the facts in issue on the pleadings, and report such portions of the evidence as either party might desire.

"The master found that the money was placed in the husband's hands for the purpose, as made known to him, of having him invest it for the wife in United States bonds; that he received it for that purpose, and promised her that he would so invest it, but that he used it in his business without her knowledge, and that it had never been repaid or returned to her. These facts were found upon the evidence, which was reported.

"But if the court should be of opinion that so much of the evidence as consisted of conversations between the plaintiff and her husband was not competent and ought not to have been admitted, then the master found that the money was the separate estate of the plaintiff; that she placed it in her husband's hands, but not for the purpose of being invested in United States bonds, or otherwise; that he never agreed to so invest it; that it was used by him in his business but that it did not appear that it was placed in his hands to be so used, or was so used with her knowledge.

"It appeared from the evidence reported that the conversations referred to took place 'in the presence of the family', which consisted, besides the husband and wife, of five children, the oldest of whom was eleven years of age. . . . ."

The Supreme Judicial Court said:

"The conversation between the husband and wife appears by her testimony to have been had in the presence of no other person except their family of young children, who are not shown to have taken any part in or paid any attention to the conversation. It must therefore be deemed incompetent evidence as a private conversation between husband and wife."

The court, therefore, decided against the widow and against the facts, although the evidence clearly showed the facts in regard to her separate property.

This rule is still in force with the result as explained in our 22nd report pp. 69-74 that veterans in the last war and in the present Korean war are unable to establish by private conversations (although they were not intended to be confidential) trusts of substantial amounts sent home to their wives.

We called attention (at p. 69) to the fact that ever since the passage of the "Uniform Desertion Act" in 1911 (now chapter 273 of the Gen. Laws) sections 7, 16, 17 and 22 have provided that in the district courts in prosecutions for non-support.

> "In no prosecution . . . shall any existing statute or rule of law prohibiting the disclosure of confidential communications between husband and wife apply."

We consider it peculiar, to put it mildly, that with that statute on the books for 41 years allowing a wife to tell the truth in court in a proceeding against her husband for non-support, a husband returning from the war is not allowed to tell the court the truth in order to establish a trust, perhaps for the care or education of his child or to help his mother or for some other purpose. We think the old rule works injustice in such cases today. In our 22nd report, where the whole subject of private conversations and the history of the statutes is discussed, we recommended a rather broad amendment. We now recommend an amendment limited to allowing such conversations in cases involving property. Mr. Muldoon dissents for reasons stated in his minority report in the 42nd report which is reprinted on p. 79 of this report.

DRAFT ACT

Section 20 of chapter 233 of the General Laws is hereby amended by inserting in the paragraph marked "First" as amended by Section 3 of chapter 657 of the acts of 1951, following the word "First", the words "except in a proceeding concerning property to which husband and wife are adversary parties" and so that said paragraph shall read (with the introductory part of said section) as follows:

Any person of sufficient understanding although a party may testify in any proceeding, civil or criminal in court or before a person who has authority to receive evidence except as follows:

First, except in a proceeding concerning property to which husband and wife are adverse parties and except in a proceeding under chapter two hundred and seventy-three A and in a prosecution begun under sections one to ten,

inclusive, of chapter two hundred and seventy-three, neither husband nor wife shall testify as to private conversations with the other.

MANDAMUS

We have two ancient, somewhat technical, proceedings, known as writs of certiorari and writs of mandamus which may be issued to correct errors of a public board or official and ordering them to do something which the court finds that they ought to do. Originally these writs could be issued only by the Supreme Judicial Court, but for about 13 years, the Superior Court has had concurrent authority to issue them. They are proceedings at law and not in equity.

By Section 1A of Chapter 213 of the General Laws:

> "The Superior Court shall have original jurisdiction concurrently with the Supreme Judicial Court of all proceedings relating to . . . certiorari and 'mandamus (except a writ of mandamus to a court or a judicial officer.' "

Formerly, because of certain technical reasons, if the wrong writ was sought, the proceeding was dismissed, and a new petition for the other writ had to be started. By Section 1C of Chapter 213 (inserted by Section 4 of Chapter 374 to 1943) the Courts were authorized to allow an amendment from one of these two writs to the other. Both are ancient common law writs and certain specified details of procedure are set forth in Sections 4 and 5 of Chapter 249. Section 4 relating to certiorari as amended provides that:

> "The Court at any time after the petition is presented may impose costs upon any party, may issue an injunction and . . . may make such order, judgment or decree as law and justice may require."

Section 5 (as amended) relating to mandamus does not contain this provision although as already stated, the petition for one writ may be amended to apply to the other.

Both, being proceedings at law, are governed in the matter of appeal by Section 96 of Chapter 231 which provides that 20 days for claiming an appeal "and except as otherwise herein provided, no judgment shall be entered while an appeal is pending. If an appeal is groundless and intended merely for delay, the court, on motion and after notice as its rules may require and upon such terms if any, as it deems reasonable, may order judgment to be entered notwithstanding the appeal, and at the same time may award or stay execution."

By Section 29 of Chapter 214 relating to equity in both courts provides, that "no process for the execution of a final decree of either

Court shall issue until the expiration of twenty days after the entry thereof "unless an appeal is waived "except that if the justice by whose order the final decree was made is of the opinion that the appeal—is groundless and intended merely for delay, process for the execution . . . may be awarded notwithstanding the appeal."

Rule 79 of the Superior Court prevents judgment until after the time for exceptions or appeal has expired and see Watts v. Watts, 312 Mass. 442, 449.

Section 22 of Chapter 214 (as amended by Chapter 309 of 1948) provides that the Supreme Judicial Court may suspend the execution or operation of the decree appealed from pending the appeal and modifying or annulling any order made by the Superior Court.

Under all these statutes, the broadest power of the trial judge to act appears to be in Section 4 of Chapter 249 relating to certiorari which specifically includes the power to issue an "injunction" at any stage of the proceedings. "Injunction" is an equitable word thus applied to a case at law. Presumably, therefore, it may be subject to modification or annullment by the Supreme Judicial Court under the equity Section 22 of Chapter 214. As petitions for certiorari or mandamus can be amended from one writ to another (as shown above) the same powers should, we think, apply as to both writs and the exercise of those powers should in both cases be brought specifically within the power of the Supreme Court to modify or annul as in equity under Section 22 of Chapter 214 to avoid confusion in practice.

We recommend the following:

DRAFT ACT

Section 4 of Chapter 249 of the General Laws, as amended by Section 1 of Chapter 374 of the Acts of 1943, is hereby amended by adding at the end thereof the words

"The powers conferred by the foregong sentence shall apply also to a petition for a writ of mandamus and to an amended petition for either certiorari or mandamus under Section 1C of Chapter 213 subject in case of appellate proceedings to the authority of the Supreme Judicial Court to suspend the operation of any judgment or decree and to amend any order pending such appellate proceedings as is provided in equity by Section 22 of Chapter 214 as amended by Chapter 309 of the Acts of 1948."

EXCEPTIONS IN CRIMINAL CASES

Section 31 of chapter 278 of the General Laws provides in the second sentence thereof, that exceptions in criminal cases

> "Shall be reduced to writing and filed with the clerk and notice thereof given to the commonwealth within three days after the verdict or after the opinion, ruling, direction or judgment excepted to is given unless a further time, not exceeding five days, except by consent of the district attorney, is allowed by the court."

Section 113 of chapter 231 relating to civil cases allows "twenty days" for exceptions "unless further time is allowed by the court."

We see no sufficient reason why defendants in criminal cases should not be allowed twenty days as in civil cases. We recommend the following

DRAFT ACT

Section 31 of chapter 278 of the General Laws is hereby amended by striking out the second sentence thereof and substituting the following sentence

"The exceptions shall be reduced to writing and notice thereof given to the Commonwealth within twenty days after the verdict or after the opinion, ruling, direction or judgment, exceptd to is given, unless further time is allowed by the court."

FEE FOR THE ISSUANCE OF AN INJUNCTION

In view of the amount of careful clerical work involved in the issuance of a restraining order or an injunction in equity cases, we recommend a fee of five dollars for such issuance, except in cases of domestic relations, to reduce the burden on the County treasuries and submit the following:

DRAFT ACT

Section 4 of Chapter 262 of the General Laws, as most recently amended by Section 2 of chapter 119 of the acts of 1950 is hereby further amended by striking out the word "injunction" in the sixth paragraph and adding at the end of said sixth paragraph the words "except an injunction, or restraining order, in cases not involving domestic relations, and for the issuance of such injunction or restraining order in the Supreme Judicial, Superior, Land or Probate courts a prepaid fee of five dollars.

ADMISSIBILITY OF WRITTEN STATEMENTS OBTAINED FROM PERSONS SUSTAINING PERSONAL INJURIES.

We, again, recommend the following:

DRAFT ACT

Section 23A of chapter 233 of the General Laws inserted by chapter 424 of the acts of 1945 is hereby amended by adding at the end thereof the words "or within such further time as the court may allow on motion and notice."

Explanatory Note

The section now provides a dead line for 10 days for furnishing copies after request, without regard for illness or anything else. The addition of the words suggested would bring this act into conformity with section 30 of chapter 231 which was amended by the insertion of the same words by St. 1949, c. 179, following the recommendation of the Council in the 24th report p. 28. The reason for the proposal is the same as that stated by the Council on p. 28 of that report—to provide for special circumstances instead of having an absolute deadline regardless of facts.

MINORITY REPORTS.

The minority reports of Judge Donahue, of Judge Cox, of Mr. Muldoon and of Mr. Goldberg, as to certain matters, are hereto annexed.

FRANK J. DONAHUE, *Chairman*
FREDERIC J. MULDOON, *Vice-Chairman*
LOUIS S. COX,
JOHN E. FENTON,
JOHN C. LEGGAT,
DAVIS B. KENISTON,
FRANK L. RILEY,
CHARLES W. BARTLETT,
JOSEPH GOLDBERG,
EDWARD O. PROCTOR.

MINORITY REPORT OF JUDGE DONAHUE

The undersigned wishes to record his dissent to the recommendation of the majority of the Council which would compel a plaintiff in a motor vehicle tort case to commence his action in a district court. I do not believe that the legislation proposed would have any material effect in speeding up the trial of motor vehicle tort actions and I can see no reason why any plaintiff should be obliged to commence an action in a court where he does not intend to try it. I believe a jury fee of twenty-five dollars, whether a jury of twelve or a jury of six is requested, would rid the jury list of a great many comparatively trivial motor vehicle suits which delay the trial of more important cases.

I also wish to put myself on record as opposed to the recommendation that interest from the date of the request for a hearing be added to workmen's compensation awards. I feel that we here in Massachusetts have enacted much legislation which has put the Commonwealth at a seriously competitive disadvantage with other industrial states and that our industries should not be further burdened until our competitors meet the standards of Massachusetts. The recent legislation under which a clerk of the court adds interest at six percent to an award in a personal injury case might be cited as a precedent for the award of interest in workmen's compensation cases. I believe that the legislation which provides for interest from the date of the writ in personal injury cases was not given careful consideration and should be repealed or modified. It results in an increase of from 12% to 24% in the amount of the judgment and of course this is reflected in the rate that the automobile owner pays for his insurance. It rewards a plaintiff for delaying the trial of his case by asking that it be heard by a jury and its result has been to impose an added burden upon the automobile owner.

The report of the Council recommending an amendment to the statute relating to the issuance of writs of mandamus resulted from my initiative, but I do not feel that the draft act recommended reaches the evil which I complained of and which apparently the Council wish to cure. An order for a writ of mandamus may have its effect entirely destroyed by the 20-day waiting period allowed the defendant in which to appeal or file a bill of exceptions. If a judge orders a writ to issue and an appeal or bill of exceptions is filed, the writ may be held up for months. Mandamus is the sort of writ that generally loses its efficacy unless it issues speedily. I believe that when a judge orders a writ to issue it should issue

forthwith unless its issuance is suspended by the justice of the superior court who has granted the petition or by a single justice of the supreme judicial court.

Frank J. Donahue

THE MINORITY REPORT OF JUDGE COX

The undersigned, ever since he became a member of the Judicial Council, has been in friendly disagreement with his associates over what matters should be undertaken by the Council for examination and report thereon, he inclining to the view that the Council should confine its efforts to the task imposed upon it by the act creating it.

As its reports have repeatedly stated, the Judicial Council was created in 1924, "for the continuous study of the organization, rules and methods of procedure and practice of the judicial system of the Commonwealth, the work accomplished, and the results produced by that system and its various parts." It is required to report annually "to the Governor upon the work of the various branches of the judicial system." and it "may also from time to time submit for the consideration of the justices of the various courts such suggestions in regard to rules of practice and procedure as it may deem advisable."

The act creating the Council followed substantially the plan first recommended by the Judicature Commission in its report of January 1921. It is apparent from this report that the Commission had in mind "some central body . . . for the continuous study of questions relating to the courts." The reasons for the recommendation that the reports be made to the Governor were subsequently stated in a letter to the chairman of the judiciary committee of the legislature, dated May 20, 1921, and signed by the three commissioners. They stated that they "do not believe it wise to place judges, who would be members of such a Council, in the position which might be misunderstood if they were expected to make annual recommendations to the Legislature, possibly altering some of their powers and duties. We believe it to be the sounder plan that the report should be submitted to the Governor for the information of the public as well as for the members of the State government, and that recommendations to the Legislature based upon such reports should be made by others, or such recommendations as might be contained in it should be called to the attention of the Legislature either by the Governor or by individuals or by members of the Legislature themselves. The

traditions of Massachusetts in regard to the separation of functions are such that to place the five judges in the position of making formal recommendations to the Legislature might be seriously misunderstood and thus cause unfortunate results which might interfere to a considerable extent with the success of the plan."

From the foregoing it would seem that the function of the Council not only was planned but by legislative fiat stated to be judicial. Its name so signifies. Its composition is largely judicial. Six of its members must be members or former members of their respective courts, four of whom are appointed by their chief justices and the judge of the land court; two by the Governor, who alone has the duty of appointing the four members of the bar. Surely such a board can hardly be said to represent a cross section of the Commonwealth as a whole.

The Judicature Commission in recommending its creation said, among other things, "It is not a good business arrangement for the Commonwealth to leave the study of the judicial system and the formulation of suggestions for its development almost entirely to the casual interest and initiation of individuals. The interest of the people, for whose benefit the courts exist, calls for some central clearing house of information and ideas which will focus attention upon the existing system and encourage suggestions for its improvement." The suggestion is implied, at least, that this work should be done by those who, from training and experience, were familiar with the work of the courts. The character of this work seems to be indicated beyond peradventure.

There is no thought, expressed or implied, in the recommendation of the Judicature Commission or the act creating the Judicial Council that the latter should, under any guise, play the part of legislative counsel, discuss constitutional questions, or investigate and report upon matters involving legislative policy or questions of substantive law.

Nevertheless, it long has been the practice of the legislature to refer all sorts of questions to the Council, many of which, in the opinion of the undersigned, are beyond the scope of subjects for the study of which it was created.

As early as 1928, when the legislature requested the Council to investigate the matter of liens on buildings and land and report in its annual report, the Council, in dealing with the matter, said: "Before proceeding with our report, we respectfully call attention to the fact that the subject of building liens seems to be beyond the

scope of subjects for the study of which the Council was created. . . . As our opinion has been requested, however, we have considered the subject as fully as the time required for other subjects would allow." And it made a report on the matter. It was here that the trouble began, as the undersigned sees it.

The following year no reports were requested by the Legislature but thereafter such procedure became quite common, some matters being referred which had some relation to procedure and practice in the courts; others dealing solely with matters of substantive law or legislative policy. Occasionally the Council respectfully demurred, as for example in 1931, when, in connection with one matter referred, it stated in its report: "The matter just discussed would affect the operation of the court. The same cannot be said of the subject matter of House 1605. Whether the business methods of that part of the community which deals in conditional sales and contracts have caused a need for standardizing, duplicating our experience with furniture 'leases' . . . is purely a legislative inquiry as to details of the substantive law relating to such matters and having no relation to the administration of the judicial system for the study of which the Judicial Council was created. We respectfully request to be excused from making the report requested, because it is not, in our opinion, within the scope of our field of service." The legislature was specifically referred to the act creating the Council as authority for the foregoing statement and it was reminded of what it had been told in 1928 relating to the request for a report on the matter of liens. It was advised to resort to the assistance of bar associations, but even so, the Council could not refrain from noting that its secretary had collected information on the subject which he would be glad to place at the service of the legislative committee or any bar association. It would almost seem as if the Council figuratively heaved a deep sigh of regret that its powers or duties were not more comprehensive.

Again in 1934, the Council stated: "In view of all this material which relates primarily to a rule of substantive law beyond the field of the Judicial Council, we respectfully beg to be excused from expressing an opinion . . .".

From year to year the Council seems to have weakened in its attitude towards reports requested which appear to be "beyond the scope" of subjects for the study of which it was created. Some examples follow of subjects: Defamation by Radio, Charitable Contributions by Guardians from Surplus Income, Mortgage Fore-

closures, Penalizing "Fake" Motor Vehicle Claims, Matters Relating to Compulsory Motor Vehicle Insurance, Written Contracts Between Husband and Wife, Receivers in Actions by Tax Collectors, Neglected Children, Penalty for Adultery, Charitable Trusts, Termination of Tenancies, Liability of Parents and Others for Damage Done by Minors. Perhaps one of the most striking example of matters referred is that "Penalizing Certain Strikes Affecting the Public Health and Public Safety." The Council very briefly asked to be excused from dealing with this matter. Although it does not completely overshadow this, nevertheless, the request made in 1951 is interesting, to say the least, that the Council investigate the subject matter of the 3d report of the commission on alcoholism which contained a recommendation that the Council "make a study of the existing statutes relating to alcoholism, with the object of making it possible to rehabilitate a larger proportion of the alcoholics who are now treated as purely correctional problems." The report of the Council on this matter is interesting to the undersigned only in the extent of its mildness as compared with the report as first drafted and adopted by the majority.

The report of the Council for 1949 states that, "During the past twenty-five years the legislature has referred many pending bills to the Council with requests for reports. Almost all of these questions have been answered with the reasons and recommendations of the Council with the few exceptions of questions of legislative policy for which the Council was neither created nor equipped." To the undersigned, the words "the few exceptions" is an understatement. But with reference to the statement generally, it would seem that if the Council was not created for the purpose, want of equipment is of no importance.

The question might fairly be raised whether the make up of the Council, to which reference already has been made, is of such a character as to fit it for the study of legislative matters.

Trial judges frequently tell juries that probably one in his right mind would not take his watch to a blacksmith for repairs. If this is a reasonable probability perhaps it can be said that a group of judges and lawyers is hardly the body which should solemnly and under the guise of legality study and report on such a question as how much time a woman convicted of adultery should spend in penal confinement, and other matters hereinbefore referred to. Elbow rubbing and ear bending are hardly attributes of the average run of judges who are eligible to appointment as members of

the Judicial Council. There still may be something left of the tradition that our judges are expected to lead more or less sheltered lives, devoting their time and energies to their work to such an extent that they gradually get out of touch with matters beyond the "scope" of their duties. At least it can be said that their work does not throw them in intimate contact with the people from whom, in the final analysis, public opinion emanates.

It would seem that the reports of the Council on extraneous matters referred to it by the legislature have been of value, judging from the results as appearing in legislative enactments, perhaps for the same reason that reports of subcommittees of legislative committees have been so helpful.

It may not be so much a question of leaving to the legislature the task of performing its own labors as it is the question of general policy which so evidently concerned the three eminent men who composed the Judicature Commission, as well as the members of the General Court who passed the act creating the Council.

The argument has been advanced that questions should be answered simply because the legislature has asked them and that the submission of each question amounts to a mandate to the Council. It is hoped that this argument has been met but if it does not seem that it has, then there are certain practical considerations which may or may not be worthy of consideration. Here are some of them.

The Council has no quarters of its own, meeting here and there from time to time somewhere in the Court House in Boston, subject, properly, to the needs and demands of those who have paramount claims for the use of the premises. It has no files unless the secretary sees fit to provide them. It has no place for working. It has one paid regular employee, its Secretary, and does, within its appropriation, employ, from time to time, part time clerical service. These matters have been called to the attention of the legislature but to no avail. Its members are not paid for their services but this is no hardship for the judges, inasmuch as their pensions or salaries go on whether they are attending to court duties or matters before the Council. But to the members of the bar who are on the Council this cannot but be a matter of substantial financial sacrifice, which, in the opinion of the undersigned, ought not to be aggravated by the study of matters beyond the scope of the act under which they were appointed. As far as is known, no lawyer member of the Council ever has complained as to this or even hinted that he should be compensated. And to the tax payers

it may be a fair question whether judges who are now paid substantial salaries to attend to court work, should continue to take time out from that work to study, discuss and report on matters which are beyond the scope of their duties as members of the Council.

The Council has been fortunate in having the avails of the learning, experience and apparently tireless energy of its secretary. In the opinion of the undersigned, congestion in the Judicial Council would be a serious matter if it were not for its secretary. It truly can be affirmed that the Council is not equipped except in one respect, its secretary.

As for the sixteen matters referred and dealt with in this report, the undersigned dissents from the opinions of the majority in all except the following, for the general reasons above stated: Enforcement of Foreign Alimony Decrees, Establishment of a Court of Claims, and Uniform Enforcement of Foreign Judgments.

A word or two as to referred matters: one relating to interest in workmen's compensation, the other for increased and retroactive payments in workmen's compensation.

Obviously both of these matters bear directly upon the industries of the Commonwealth and it is equally obvious that any increase in compensation benefits must be borne by those who buy the output of those industries. It should require no space to point out the serious importance of legislation respecting these matters.

The report of the majority in the interest matter contains a novel statement: "If the legislature as a matter of policy decides in favor of adding interest, after hearing, . . ." and then goes on to tell the legislature what "we think" the limitations should be. "We" arrived at this process of thinking without the "hearing" which it is assumed the legislature will give in the matter.

If ever there were matters as to which the Council should mind its own business, here are two, in the opinion of the undersigned.

As for other matters dealt with in this report of the Council, the undersigned has nothing to say except as to one, namely, Congestion in the Superior Court. For some reason the statistics reported do not include the number of cases that were marked inactive during the years. Since this dissent was drafted and submitted, the report has been amended by adding a reference to the tables 9, 10, and 11, showing the cases marked inactive. No statistical reference is made as to the elapsed time between the entry of a case and the time when it could have been tried. If that time has in-

creased in recent years, no suggestion by way of explanation is made. If the figures reported show a somewhat marked drop in the results accomplished by the court in the matter of trials, there is nothing said by way of explanation, and, what is more, nothing to show that the Council made the slightest effort to find an explanation, if one is available.

The undersigned, having in mind the avowed purpose for which the Council was created, is of opinion that it well might have devoted its energies, and those of its secretary, a little more to this matter of congestion and very much less to matters which seem to be beyond the scope of its legitimate enquiries.

Louis S. Cox.

MINORITY REPORT BY MR. MULDOON AS TO PRIVATE CONVERSATIONS BETWEEN HUSBAND AND WIFE CONCERNING PROPERTY.

As indicated in the report of the Council (at p. 67) Mr. Muldoon dissents from the recommendation on this subject for the reasons stated in his minority report on the recommendation in the 22nd report in 1946 (pp. 74-76) which is reprinted as follows:

"Nothing should be done to break down the barrier that protects the marital status from any disruption caused by civil or criminal proceedings. It is true that the common law disability that prevented a husband or wife from testifying in any action civil or criminal in which the other spouse was involved was based upon the theory that the interest of such a witness would be so great as to make his or her testimony practically worthless. It is not true, however, that this reason was either the only one, or, to my mind, the chief reason for this disability.

"The policy in New York, and a policy with which I agree, is based upon experience which indicates that far less evil will result from the exclusion of communications and transactions between husband and wife than will result from their admission. It may in individual cases work hardship, but the destruction of confidence between husband and wife would cause much misery and seriously affect the marriage relation. "This rule is founded upon sound public policy. Those living in the marital relation should not be compelled or allowed to betray a mutual trust or confidence which such relation involves." (*Stillman* v. *Stillman,* 187 N. Y. Supp. 383.)

"The New York Act provides:—

'Except as otherwise specially prescribed a person shall not be excluded or excused from being a witness by reason of his or her interest in the event of an action or special proceeding . . . or because he or she is the husband or wife of the party thereto . . .' Civil Practice Act, Section 346.

'A husband or wife is not competent to testify against the other, upon the trial of an action, or the hearing upon the merits of a special proceeding, founded upon an allegation of adultery, except to prove the marriage or disprove the allegation of adultery. However, if upon such trial or such hearing the party against whom the allegation of adultery is made produces evidence tending to prove any of the defenses thereto mentioned in section eleven hundred and fifty-three of this act, the other party is competent to testify in disproof of any such defense. A husband or wife shall not be compelled or, without consent of the other if living, allowed to disclose a confidential communication made by one to the other during marriage. In an action for criminal conversation, the plaintiff's wife is not a competent witness for the plaintiff, but she is a competent witness for the defendant as to any matter in controversy; except that she cannot, without the plaintiff's consent, disclose any confidential communication had or made between herself and the plaintiff.' Civil Practice Act, Section 349.

"To summarize:

"1. In divorce actions neither may testify against the other except:

a. to prove the marriage,

b. to disprove the allegation of adultery; or

c. to disprove any of the following defenses:

1. Connivance
2. Forgiveness
3. Statute of limitations; or
4. Adultery of plaintiff

"2. In an action for criminal conversation, the plaintiff's wife may not testify for the plaintiff although she may testify for the defendant.

"3. Neither may without the consent of the other testify to a confidential communication made during marriage. In divorce actions, the courts are most strict in enforcing the statutory prohibition against allowing either spouse to testify against the other except as to those matters which are expressly excepted in the statute. *Colwell* v. *Colwell*, 43 N. Y. Supp. 439.

"Section 2445 of the Penal Law provides that a husband or wife of a person indicted or accused of a crime is in all cases a competent

witness but neither husband or wife can be compelled to disclose a confidential communication made by one or the other during their marriage.

"Confidential communications are those communications that are 'expressly made confidential, or such as are of a confidential nature or induced by the marriage relation.' *Parkhurst* v. *Berdell,* 110 N. Y. 386; 18 N. E. 123.

"I am of the opinion that the marital relation can best be preserved by guaranteeing that no communication which is expressly made confidential, or is of a confidential nature, or induced by the marriage relationship, should ever be disclosed under any conditions without the consent of both.

"The privileged nature of such confidential communications need not be extended to all private communications between husband and wife, but I think it would be unwise to enact a piece of legislation such as has been proposed in the draft. Its purpose is understandable but the wording seems to make the act entirely too sweeping in its effect. The question involved is after all a question of public policy to be decided by the legislature, rather than a question of procedure which lies within our field."

REPORT OF MR. GOLDBERG

There has been much discussion as to the province and authority of the Judicial Council; as to what matters should be undertaken by the Council for reexamination and report.

No matter how strict a construction one may place upon the act of 1924, Chapter 244 that created the Judicial Council and defined its tasks and duties, the fact remains that its language is such that it affords the Judicial Council a very large and varied latitude and approach. The act states that the Judicial Council was created "for the continuous study of the organization, rules and methods of procedure and practice of the judicial system of the Commonwealth." Certainly, any legislation that comes to the attention of the legislature that even in a remote manner, will and may, affect the rules, and methods of procedure and practice of the judicial system, is properly before the Judicial Council for reexamination and report. If the Council was to pursue a very narrow and strict interpretation of the Act, as some advocate, then a group of busy people would have the matter of congestion in the Superior Court of the Commonwealth, as practically, their only immediate concern.

If you read the Council's present report for 1952 or if you just

glance over the "Contents of this Report" you will see that most of the reports concern themselves with the rules and methods of procedure and practice of the judicial system, either directly or indirectly, to wit: Congestion in the Superior Court; Venue in the District Courts; Removal from the District Courts, Attachment of Wages; Judgment on Undisputed facts, etc., etc. Many of the reports come about as a result of matters referred to the Council by the legislature. Whether or not the Council was created for the study of legislative matters in general, is not the point; the important fact is that the legislative matter referred to the Council, in every instance, in some way or other, pertains to our judicial system. The request of the legislature in 1951 to have the Council "make a study of the existing statutes relating to Alcoholism," with the object of making it possible to rehabilitate a larger proportion of the alcoholics who are now treated as purely correctional problems", in my considered opinion, had a vital and direct bearing on the practice of the judicial system. It is the concern of our courts, whether or not thousands of alcoholics should be subject to rehabilitation or treated on a basis of a purely correctional approach. Our probation system was conceived and grew, on the same theory—a theory of giving offenders a chance to become rehabilitated. The report as drawn and submitted on this question was exhaustive, documented and of great value to the courts, the bar and the legislature. Our scholarly secretary marshaled an informative history on the subject, supported by data and decisions. To my way of thinking, that report was definitely within the province of the council, and furthermore, I feel that the council rendered a service of value, in preparing and submitting it, instead of saying that it is beyond the scope of the Council to consider it.

If I had the space, I could treat other matters referred to, as beyond the scope of the Council, in the minority report, and point out that the Council's treatment of these causes and their report were helpful to the judicial system and informative to the bar and legislature.

It is my opinion that this type of a Council must be elastic. It is only advisory in its reports. The act creating the Judicial Council does not by its language put any limitations on its tasks. The Council has operated effectively—it has been instrumental in guiding much good legislation. Assuming that a few matters referred to it, may have been beyond its specific scope, still it is beyond dispute, that, even on these matters, the reports served to mould effective legislation.

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STATISTICS OF THE DISTRICT COURTS OF MASSACHUSETTS FROM OCTOBER 1, 1951 TO OCTOBER 1, 1952
AS REPORTED BY THE CLERKS OF SAID COURTS.

Compiled by the Administrative Committee of District Courts

DISTRICT COURT	Civil Writs Entered	Contract	Tort	Summary Process (Ejectment)	All Other Cases	Removals to S. C. (Total of all removals)	Total Motor Tort Cases entered	Total removals of such to Superior Court	Reported to App. Div.	Appealed to S. J. C.	Supplementary Process	Small Claims	Criminal Cases Begun	Criminal Appeals	Drunkenness Total Number of Complaints	Automobile Cases (total)	Operating under influence of intoxicating liquor	Juvenile Cases under 17 years
Central Worcester	3,043	1,798	865	333	47	160	712	80	4	1	1,217	3,879	10,544	99	3,375	3,500	150	370
1st East. Middlesex, Malden	3,967	2,061	1,528	343	35	551	1,338	275	4	0	972	2,397	4,810	125	1,032	2,982	140	153
Springfield	2,633	1,578	688	305	62	149	519	102	2	2	1,291	2,830	19,783	41	5,082	12,314	197	275
Roxbury	1,712	185	283	1,231	13	49	251	40	2	0	1,014	1,530	13,463	233	3,529	6,546	129	510
3rd East. Middlesex	3,315	1,757	1,178	363	17	226	1,068	157	10	2	796	2,879	7,892	148	2,438	5,148	264	156
Dorchester	1,107	198	469	432	8	84	423	68	1	0	1,758	1,461	4,206	80	1,356	2,604	83	200
East Norfolk, Quincy	2,427	1,624	624	150	29	149	546	86	0	0	745	2,354	4,752	115	1,519	2,197	231	183
Southern Essex, Lynn	2,222	1,097	821	254	50	328	697	229	2	0	744	1,420	4,468	46	1,555	1,940	149	105
3rd Bristol, New Bedford	1,544	712	629	194	9	170	463	108	10	5	259	2,336	3,776	132	1,332	664	285	175
Lowell	1,802	945	669	175	13	143	576	120	0	1	379	2,098	3,994	34	1,612	1,094	99	134
2nd Bristol, Fall River	1,056	592	339	117	8	64	268	18	1	0	137	898	3,059	148	1,362	807	120	83
Lawrence	927	442	395	78	12	92	271	79	0	0	106	649	2,385	26	1,219	614	94	99
Somerville	1,717	995	468	236	18	119	375	98	3	0	479	1,015	2,693	57	1,173	802	88	183
First Essex, Salem	1,593	1,121	360	105	7	149	281	88	4	0	278	715	2,786	124	1,093	956	168	80
2nd East. Middlesex, Waltham	1,283	791	330	152	10	59	305	38	3	0	270	864	4,735	87	835	3,174	114	191
West Roxbury	549	143	185	218	3	39	153	28	1	0	414	867	2,374	121	752	1,150	57	108
North. Norfolk, Dedham	1,006	690	267	44	5	52	235	23	6	0	398	488	1,422	29	455	702	107	31
Newton	1,177	755	348	70	4	93	291	40	1	0	327	693	2,260	32	469	1,530	30	31
Brockton	1,255	705	389	88	73	72	350	51	5	2	339	823	2,037	18	742	752	75	61
Hampshire, Northampton	451	214	112	61	64	52	98	33	0	0	60	854	2,501	46	539	1,477	127	45
4th East. Middlesex, Woburn	976	671	244	58	3	57	218	33	0	0	422	839	1,655	22	752	605	83	53
Chelsea	972	313	459	192	8	132	359	86	1	0	381	1,023	4,037	127	1,400	1,416	84	159
East Boston	607	109	251	241	6	88	214	71	0	0	239	789	2,890	85	819	1,318	40	239
Brighton	377	96	106	173	2	23	83	14	0	0	276	630	4,089	51	981	2,577	64	80
Central Berkshire, Pittsfield	612	481	67	55	9	22	57	6	1	0	221	1,676	3,062	13	543	2,116	54	43
1st Bristol, Taunton	522	267	185	62	8	84	139	38	0	0	60	573	1,577	63	169	623	67	36
Brookline	1,158	719	331	86	22	53	281	26	1	0	304	528	2,964	43	261	1,172	42	59
Holyoke	403	185	117	97	4	43	102	19	0	0	59	677	1,943	12	1,053	493	109	68
No. Cent. Essex, Haverhill	606	280	246	67	13	71	211	49	1	1	69	522	1,202	28	584	263	43	28
South Boston	441	68	41	331	1	9	23	6	0	0	179	436	4,099	135	1,879	1,420	70	132
2nd Plymouth, Hingham	761	561	143	38	19	40	129	29	0	0	244	760	1,454	73	610	410	113	42
Chicopee	175	79	35	60	1	8	19	1	0	0	25	298	1,844	11	572	965	77	37

Holyoke	403	185	117	97	4	43	102	19	0	0	59	677	1,943	12	1,053	493	109	68
No. Cent. Essex, Haverhill	606	280	246	67	13	71	211	49	1	1	69	522	1,202	28	584	263	43	28
South Boston	441	68	41	331	1	9	23	6	0	0	179	436	4,099	135	1,879	1,420	70	132
2nd Plymouth, Hingham	761	561	143	38	19	40	129	29	0	0	244	760	1,454	73	610	410	113	42
Chicopee	175	79	35	60	1	8	19	1	0	0	25	298	1,844	11	572	965	77	37
Fitchburg	456	320	68	67	1	20	57	7	0	0	176	713	1,859	25	912	455	63	73
1st So. Worcester, Webster	244	157	53	31	3	15	46	3	1	0	47	1,046	2,627	20	546	1,734	105	21
4th Bristol, Attleboro	349	222	94	33	0	32	87	24	0	0	227	750	1,431	60	168	612	65	69
1st So. Middlesex	796	490	245	52	9	130	237	101	0	0	171	406	1,997	7	503	1,011	84	62
Central Middlesex, Concord	415	266	118	30	1	38	110	28	0	0	115	385	1,606	29	255	1,181	74	46
West. Norfolk, Wrentham	443	337	86	18	2	33	77	22	0	0	114	469	1,541	23	211	1,031	75	69
Franklin, Greenfield	242	176	42	23	1	11	40	9	1	0	406	974	1,479	16	278	700	87	49
1st No. Worcester, Gardner	320	200	89	29	2	22	71	12	0	0	187	568	1,207	16	463	520	62	27
East. Essex, Gloucester	391	307	54	25	5	33	49	15	0	0	106	174	952	18	439	148	38	42
1st Barnstable, Barnstable	490	391	59	37	3	15	48	6	0	1	116	616	2,346	47	691	828	141	47
West. Hampden, Westfield	114	73	21	18	2	6	15	5	0	0	23	403	1,388	7	159	890	67	45
1st. No. Middlesex, Ayer	151	85	53	9	4	9	53	6	2	0	40	282	2,559	46	411	1,806	203	21
4th Plymouth, Wareham	310	213	69	24	4	13	66	10	1	1	75	585	1,450	53	317	743	75	72
3rd Plymouth, Plymouth	309	232	53	19	5	12	46	9	1	0	105	471	862	29	282	313	97	54
2nd So. Worcester	102	55	24	23	0	5	24	4	0	0	12	254	219	4	30	93	10	16
Peabody	350	225	97	28	0	46	72	24	0	0	93	192	1,012	66	440	240	43	19
South. Norfolk, Stoughton	344	239	72	32	1	29	39	10	0	0	107	339	467	33	111	219	41	37
2nd East. Worcester, Clinton	168	82	61	21	4	24	54	12	0	0	89	259	421	12	90	166	22	23
Charlestown	519	60	326	131	2	124	267	107	0	0	148	313	4,697	106	1,760	2,513	33	196
Leominster	210	163	21	25	1	7	21	4	1	0	89	188	647	9	359	110	23	22
Marlborough	257	142	98	11	6	48	92	39	0	0	40	406	581	36	173	254	33	37
North. Berkshire, No. Adams	142	86	25	28	3	5	20	2	1	0	17	393	726	14	257	241	35	28
3rd So. Worcester, Milford	189	104	29	14	42	7	29	4	0	0	139	227	417	10	162	111	9	29
Newburyport	176	94	55	27	0	16	49	12	0	0	36	516	1,531	37	511	607	58	46
Eastern Hampden, Palmer	136	109	19	6	2	1	19	1	0	0	46	327	1,093	22	143	745	54	33
1st East. Worcester, Westboro	111	65	31	11	4	5	31	3	0	0	28	269	810	7	110	497	37	40
Western Worcester	212	152	36	22	2	13	22	4	2	0	85	294	464	23	119	192	29	18
Natick	245	165	68	6	6	23	57	18	1	0	89	163	1,351	8	163	1,065	67	8
2nd Barnstable, Provincetown	223	195	16	11	1	19	14	2	0	0	74	322	706	11	236	220	47	36
2nd Essex, Amesbury	104	57	35	12	0	19	32	9	0	1	23	202	1,045	17	460	405	41	18
4th Berkshire, Adams	74	56	9	9	0	1	8	0	0	0	12	139	549	0	138	292	29	12
So. Berkshire, Gt. Barrington	139	109	14	16	0	4	13	4	0	0	21	353	493	11	162	167	23	4
Lee	90	57	28	5	0	5	28	1	0	0	15	166	450	5	95	232	41	19
East. Franklin, Orange	37	33	2	2	0	2	2	2	0	0	5	89	201	1	42	95	9	12
East. Hampshire, Ware	54	33	16	5	0	7	16	6	0	0	24	95	100	0	15	57	7	3
3rd Essex, Ipswich	55	47	6	2	0	2	6	0	0	0	22	61	262	6	86	56	26	4
Winchendon	41	23	4	6	8	0	4	0	0	0	8	97	157	2	45	64	12	10
Williamstown	34	18	8	4	4	2	8	2	0	0	3	103	385	5	54	245	13	12
Dukes, Edgartown	38	35	1	1	1	4	1	1	0	0	26	162	182	6	38	78	7	9
Nantucket	20	19	0	0	1	1	0	0	0	0	0	0	135	0	31	26	4	7
Total	51,496	28,124	15,377	7,282	713	4,238	12,985	2,667	74	17	17,621	53,572	177,161	3,251	52,557	85,293	5,542	5,544

ADDITIONAL INFORMATION

Neglected Children	555
Inquests held	53
Parking tickets returned to Clerks' offices	513,743
Drunkenness releases by probation officers	26,702
Insane Commitments	5,615
Intoxicating Liquor cases	189

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The fact remains, that the legislature has leaned heavily on the Judicial Council and has followed its reports with care and respect. There is no other agency that the legislature can turn to for guidance in matters dealing with legislation that will affect the judicial system, in its every avenue of operation. Because of its elasticity and flexibility the Council has rendered valuable and indispensable service to the judicial system of the Commonwealth—it has gained respect and stature, because, it has discussed, searched and reported on almost all matters presented to it.

JOSEPH GOLDBERG.

APPENDIX A

District Courts

(Other than the Boston Municipal Court)

There are 72 of these courts (eight of them in Suffolk County). Their volume of business appears in the table opposite. A five year comparative table appears below.

District Court Business 1947-1952

	1947 to 1948	1948 to 1949	1949 to 1950	1950 to 1951	1951 to 1952
Civil Writs Entered	59,817	58,697	55,702	51,499	51,496
Contract	24,512	29,737	30,647	27,881	28,124
Tort	15,443	15,663	14,547	14,917	15,377
(Ejectment)	18,798	12,282	9,715	7,892	7,282
All Other Cases	1,064	1,015	793	809	713
Rep. to Appellate Division	82	90	96	84	74
Appealed to Sup. J. Court	20	15	19	12	17
Supplementary Process	13,148	16,423	18,255	17,664	17,621
Small Claims	48,594	56,166	54,962	54,229	53,572
Criminal Cases Begun	155,452	157,988	155,398	161,897	177,161
Criminal Appeals	3,150	3,462	3,317	3,453	3,251
Drunkenness	59,398	56,696	54,679	52,870	52,557
Op. under Inf. Int. Liquor	4,079	4,197	4,921	5,175	5,542
Total Automobile Cases	66,076	68,522	68,352	69,665	85,293
Int. Liquor Cases	207	179	182	206	189
Juv. Cases under 17 Years	4,701	5,219	4,933	5,116	5,544
Total Motor Cases Ent.	13,593	13,477	12,456	12,901	12,985
Total Motor Cases Rem.	3,315	3,065	2,585	2,502	2,667
Neglected Children	932	795	593	526	555
Inquests held	82	76	—	55	53
Parking Tickets returned to Clerk's Offices	249,142	298,217	364,080	419,582	513,743
Drunkenness Releases by Probation Officers	31,328	28,932	27,950	26,391	26,702
Insane Commitments	6,150	5,938	5,447	5,686	5,615

ADMINISTRATIVE COMMITTEE OF THE DISTRICT COURTS

Circular Letter of September 12, 1952

To the Justices, Clerks and Probation Officers of the District Courts:

We are resuming the mid-year letter of the Committee which was omitted last year because the legislature did not prorogue until late in the calendar year. One of the purposes of this mid-year letter is to bring to the attention of the officials of the district courts the acts of the legislature of particular interest to them. Following is a list of the more important acts of the legislature of 1952 which affect practice in the district courts. These acts should be thoroughly examined by court officials so that they may be familiar with their provisions.

[Here follows a list of 53 acts of 1952.]

RECENT DECISIONS OF THE SUPREME JUDICIAL COURT

The attention of judges and clerks is called to the following decisions which have been handed down by the Supreme Judicial Court since our last circular letter. The cases should be carefully read to obtain their full import and effect.

[The list, without summaries, is as follows]

Robert P. Tardiff, Petitioner, 1952 A. S. 77.
[Notice on Application for Commitment as Delinquent]

Commonwealth vs Bragg, 1952 A. S. 143.
[Clam Digging License]

Commonwealth 1: Adams, 1952 A. S. 191.
[Making Cider From One's Own Apples]

McDonald vs Hanahan, 1952 A. S. 381.
[Promissory Note]

Mastrullo et al. vs Ryan, 1952 A. S. 477.
[Summary Process]

Martineau vs Director of the Division of Employment Security et al., 1952 A. S. 583.
[Employment Security]

Commonwealth vs Crosby, Jr., 1952 A. S. 595.
[Interstate Transportation of Commodities on Sabbath]

Wall vs Registrar of Motor Vehicles, 1952 A. S. 615.
[Suspension of Operating License]

Taylor vs Goldstein, 1952 A. S. 713.
[Invited Person]

Cavanaugh vs First National Stores, Inc., 1952 A. S. 735.
[No Action for Injury to a Child in the Womb]

COMMITMENTS TO STATE FARM FOR DESERTION AND NON-SUPPORT

In our circular letter dated January 2, 1952, beginning on page 11, we discussed commitments to the state farm, and on page 12 stated that we were of the opinion that commitments to the state farm for crimes of vagrancy, larceny, desertion and non-support are not authorized, and advised the courts to be extremely careful in their commitments to the state farm.

Since our circular letter was issued we have noted two instances where commitments have been made to the state farm for non-support, and that on proceedings in the Supreme Court it was ordered that the judgment of the court making such commitments be reversed and that the case be remanded to that court in order that such judgment might be rendered as should have been rendered.

We again urge all judges and clerks to re-read our discussion of this matter referred to above.

INDEX TO CIRCULARS OF THE ADMINISTRATIVE COMMITTEE

We desire to call the attention of the district court officials to the fact that the 27th Report of the Judicial Council of Massachusetts for 1951 (Public Document 144) contains an excellent index to matters discussed in letters of the Administrative Committee from 1929 to 1951. It will be found on page 57 of the report.

We recommend that the clerk of each court file this report with the circular letters so that it may be available for the use for which it was intended. It should prove very helpful.

DOCKETING JUVENILE CRIMINAL COMPLAINTS

The committee had the following inquiry submitted to it by the association of clerks in the western part of the state:

1. Should juvenile criminal complaints be entered in the same index and docket as the juvenile delinquency complaints are entered?
2. Should the criminal complaints be heard in the juvenile session, the same as the delinquency complaint, if a juvenile is involved?

We gave the following answer:

"Juvenile criminal complaints should be entered in the same index and docket as the juvenile delinquency complaints are entered. The docket should show that the delinquency complaint was dismissed and the criminal complaint should be marked 'criminal complaint' but carried in the same docket. The criminal complaint, of course, should be heard in the juvenile session the same as the delinquency complaint if a juvenile is involved."

In this connection we desire to state that for a number of years the clerks in Hampden, Franklin, Hampshire and some from Berkshire and Worcester Counties have formed an informal association, meeting monthly for dinner and

consultation. These meetings are very largely attended and give the clerks an opportunity to know each other better and to discuss their mutual problems. The clerks inform us that they have found these meetings very helpful.

We would respectfully suggest that other clerks in courts conveniently located might well consider the advisability of forming such an association. We think the meetings would prove interesting and helpful.

TWO INTERESTING DECISIONS FROM OTHER STATE SUPREME COURTS

We recently have come across two decisions from the Supreme Courts in other states involving matters which, so far as we know, have not been passed upon by our own Supreme Court. We pass them along to you, feeling that they may be helpful.

The first has to do with the question as to whether or not the court may take judicial notice of the time of the rising or setting of the sun on any given day. In State vs Morris, 47 Conn. 179, the court said "the time of the rising or the setting of the sun on any given day, belongs to a class of facts like succession of seasons, changing of the moon, days of the month and week, of which courts will take judicial notice. The almanac is used, like the statute, not strictly as evidence, but for the purpose of refreshing the memory of the court and jury".

The other case has to do with the registering or receiving of bets. In Sullivan vs Vorenberg, 241 Mass. 321, our Supreme Court says "the receiving of a bet upon a horse race and making a memorandum of it on a slip of paper delivered to the one making the bet is in fact the registering of a bet and is illegal gaming under the statutes of this Commonwealth".

The court does not say, however, that in order to register a bet that a memorandum of it on a slip of paper must be made and delivered to the one making the bet. It is common knowledge that at the present time those engaged in receiving or registering bets many times make no memorandum of it whatever.

In State vs Pearlman, 23 N. E. Rep. 2d Ed. 499, or 136 Ohio State 36, the court held that the receiving of money as a wager on a horse in a race, without making any memorandum, was registering a bet, stating the defendant knew and must have recorded in his own memory at least that he received the money as a wager on "Travel Agent". One may merely make a mental record.

DISPOSAL OF OBSOLETE AND USELESS PAPERS AND RECORDS IN COURTS

The attention of the clerks is called to Rule 9 of the General Rules of the Supreme Judicial Court, which became effective on June 30th last. This rule relates to the disposal of obsolete and useless papers and records in courts.

Acting under the authority given by Chapter 276 of the Acts of 1952, the Supreme Court, on July 1st last, amended said Rule 9 so as to provide for the disposal, by destruction or otherwise, of criminal complaints which have

been disposed of by being placed on file as provided in G. L. (Ter. Ed) Chap. 218, Sec. 38, and have remained on file for more than twenty years.

This new rule deals with many papers and records. It would serve no useful purpose to digest it here. Therefore, we suggest to the clerks that when they desire to dispose of any papers and records as obsolete and useless, they carefully study said rule and be guided by its requirements and provisions. No papers or records should be destroyed until this has been done by the clerk and he is satisfied that under the rule he has authority to dispose of them.

PAYMENT OF WITNESS FEES TO STATE POLICE OFFICERS

Chapter 235, approved April 12, 1952, effective July 12, 1952, provides that any officer of the division of state police appointed under Section 9A of Chapter 22 of the General Laws, commonly known as state troopers, on duty at night, or on vacation or furlough, or on a day off, who attends as a witness in any civil or ciminal case pending in a district court or in the superior court, or before any trial justice, shall be allowed a witness fee in the amount of three dollars for each day's attendance, except his first attendance as arresting officer.

This act places state police officers upon the same basis as other police officers in respect to eligibility to receive fees for attendance at court sessions as a witness.

Manifestly, by this act and previous acts providing witness fees for officers, it was the intention of the Legislature to compensate police officers who had to come into court on a day when they were not on duty, like when on vacation, furlough or on a day off, and also when they had to appear in court following a tour of duty during the night previous to the day on which they appear. It was not the intention of the Legislature to compensate officers who were on duty during the day and left their posts to come into court to give testimony. There can be no question as to when a police officer of a city or town is on vacation, furlough or on a day off.

Some question has arisen, however, as to when state police officers are "on night duty" and we have been asked to interpret the meaning of these words as used in the act. This comes about because at the various state police barracks throughout the Commonwealth living quarters are maintained which may be used by officers who do not have homes or residences within easy distance of the barracks. Officers who have homes or residences nearby are generally permitted when on day duty to spend the night at their homes. All officers, whether living at the barracks or living at home, are subject to be called for night duty if occasion should require.

It is our opinion that the words "on night duty", as used in the act, mean that an officer to be on such duty must actually perform during the night the duties of his office; that there is a difference between being on call for night duty and the performance of night duty. It cannot be said that an officer who sleeps through the night at the barracks is on duty while his fellow officer who sleeps at home is not. The former is not entitled to any advantage over the latter.

Therefore, we advise clerks of the district courts that in our judgment state police officers who have not performed any tour of duty during the previous night are not entitled to a witness fee when they come into court the following day as a witness. Of course, an officer who is actually on a tour of duty during the night and comes into court on the following day as a witness is entitled to his fee under the statute.

WAIVER OF INTERSTATE RENDITION PROCEEDINGS

During the past year we have had inquiries from various courts in reference to forms to be used when a defendant charged with being a fugitive from justice desires to waive rendition proceedings. Two or three of the courts have prepared such forms, some of which have been printed. We have examined them and they seem to satisfactorily cover the requirements of the statute and we have advised such courts that they may continue to use the same. For the information and use of courts not already having such blanks, we are suggesting the following form:

[The form appears on p. 14 of the letter.]

It is to be noted that by the provisions of G. L. Chapter 276, Section 20J that a copy of such consent is to be delivered to the agent of the demanding state.

QUALIFICATIONS FOR APPIOINTMENTS IN THE PROBATION SERVICE

In view of the fact that legislation in recent years has, to some extent, assured the payment of reasonable compensation to full time members of the probation service which should make it possible to select candidates who are well qualified for such positions, the Committee desires to notify the justices of the several courts that hereafter approval of nominees will not be readily given in cases in which the nominee fails to satisfy the following requirements:—

1. Should have graduated from a high school or had the benefit of equivalent academic schooling;
2. Should have had—
   (a) at least two years of satisfactory work in an accredited college or
   (b) in lieu thereof, two years of case work experience in an accredited public or private social agency or work in an allied field, such as like experience in teaching, personnel work, etc., and
3. Should indicate a positive professional attitude toward the work which will be required from him or her, as distinguished from regarding the position merely as an opportunity to earn a livelihood.

The Committee recognizes the fact that in some cases there may well be special circumstances which would permit a departure from the above requirements, such as service as a part time probation officer or demonstrated personal qualifications or clear evidence that a better qualified candidate is not available for appointment.

The above has been worked out in collaboration with the Board of Probation.

NOTICE OF AID TO DEPENDENT CHILDREN

Under date of July 2, 1952, Mr. Tompkins, the Commissioner of the Department of Public Welfare, wrote to all the justices that as of July 1, 1952 the Federal Social Security Act required that where the Aid to Dependent Children program was operating and the cause of dependency was due to desertion or abandonment by parent or parents, such parents be reported to law enforcement officials. The Department of Public Welfare felt it was most feasible and practicable to give such notice to the clerks of the various district courts. Accordingly, a form was prepared, which is Mass. DPW form A20, giving notice to the clerk of the district court in the district where aid is being given and a great many of these notices have been sent to the various clerks.

Many of the judges who received Mr. Tompkins' letter of July 2nd questioned whether the clerk of the district court was the proper law enforcement official to whom the foregoing report should be made. The Committee has conferred with Mr. Tompkins and several members of his staff. We understand from them that it is essential in order to receive federal aid under the Federal Social Security Act that this provision of notice to the law enforcement official be given and we further understand from Mr. Tompkins that the notice above referred to, to the clerk of the district court, is satisfactory to the federal officials. The receipt of such notice by the clerk imposes no duty upon him to take any action against any parent who has deserted, abandoned or failed to support his child. A complaint must be made in court by the person entitled to such support or those persons designated in the statutes of this Commonwealth.

However, we advise all clerks to receive these notices entitled, "notice to law enforcement official" and keep them on file in a general file at least until a complaint is entered against the person who is alleged to be responsible for support of the dependent child. We understand such procedure meets with the approval of the Department of Public Welfare and the federal authorities and feel it is an indication of our cooperation in the administration of the law respecting aid to dependent children.

The Honorable Chester F. Williams, Justice of the Third District Court of Southern Worcester at Milford, has compiled for his use on the bench an alphabetical list of offences under G. L. Chapter 90 (motor vehicle law) together with the penalties provided for in each offence. It consists of many pages devoted generally to a few offences on each page and we feel it would not be feasible or helpful to publish the same in this letter. However, if any of the justices or officials are interested in procuring a copy of this compilation, we will be glad to furnish them a photostatic copy of the same.

The Committee will continue its customary visits to the various courts having in mind that it may be able to cover a majority of the courts in the system during the calendar year.

FRANK L. RILEY, *Chairman*

KENNETH L. NASH ERNEST E. HOBSON

LEO H. LEARY ARTHUR L. ENO

STATISTICAL COMPILATION OF WORK OF TRIAL JUSTICES

Reported to the Administrative Committee of the District Courts

October 1, 1951 to October 1, 1952

	Criminal Cases Begun	Criminal Appeals	Drunkenness	Drunkenness Releases	Automobile Cases	Juveniles under 17 yrs.
North Andover..	13	0	8	8	5	0
Andover	168	1	0	0	168	0
Nahant	98	0	17	13	58	5
Marblehead	160	0	76	44	63	0
Saugus	482	0	146	115	336	31
Hopkinton	0	0	0	0	0	0
Hudson	2	0	1	0	0	0
Hardwick	11	0	7	0	0	0
Barre	36	1	2	0	21	0
Ludlow	122	1	26	0	75	0

By St. 1947 Chapter 343 civil jurisdiction of claims up to $50.00 under the small claims procedure was extended to the Trial Justice in the town of Barre. Thirty-eight (38) such cases have been entered for the above period.

APPENDIX B

STATISTICAL INDEX

APPENDIX C

SUMMARY OF THE WORK ACCOMPLISHED BY THE VARIOUS COURTS

The act creating the Judicial Council (reprinted at the beginning of this report) provides that the Council shall study "the work accomplished and the results produced by the judicial system and its various parts" and "shall report annually upon the work of the various branches."

The annual periods reported by the different courts are not the same, some reporting for the last calendar year while others report from June 30 to June 30, or from September 1 to September 1, etc. The details as to counties appear below.

SUPREME JUDICIAL COURT

During the court year September 1, 1951, to August 31, 1952, the Supreme Judicial Court decided 211 cases[1] with opinions and 16 cases by rescripts, not accompanied by opinions, as shown by the table below. Also, there were 5[2] advisory opinions. These opinions are reported beginning in 327 Mass. at page 677 and ending in 329 Mass. ——.

Geographical Distribution of Full Bench Cases

	Opinions	*Rescripts only*
Barnstable	4	
Berkshire	7	3
Bristol	15	
Dukes County	1	
Essex	15	1
Franklin	1	
Hampden	13	1
Hampshire	3	1
Middlesex	40	3
Norfolk	12	1
Plymouth	7	1
Suffolk	84	4
Worcester	9	1

Dissenting opinions:

Delaware & Hudson Co. v. *Boston Railroad Holding Co.*, Mass. Adv. Sh. (1951) 1093; 328 Mass. 63.

Gally, petitioner, Mass. Adv. Sh. (1952) 693; 329 Mass. ——.

[1]Where one opinion covered more than one case, it is counted as one case.
[2]In reply to one question submitted, two opinions were written.

The table of full bench cases from 1875 to 1939 appears on page 71 of the 15th report. The usual table of business other than full bench cases follows:—

SUPREME JUDICIAL COURT ENTRIES FOR ALL COUNTIES

FOR THE YEAR BEGINING SEPTEMBER 1, 1951, THROUGH AUGUST 31, 1952

(Not including full bench cases)

	Equity	Transferred to Superior Court	Referred to Masters or Auditors	Prerogative Writs	Petitions for Admission to Bar	Other Proceedings
Barnstable	—	2	—	2	—	2
Berkshire	—	—	—	—	—	5
Bristol	—	—	—	—	—	—
Dukes	—	—	—	—	—	—
Essex	3	2	—	1	—	2
Franklin	—	—	—	—	—	—
Hampden	—	—	—	—	—	—
Hampshire	—	—	—	—	—	3
Middlesex	1	1	—	1	—	—
Nantucket	—	—	—	—	—	—
Norfolk	2	1	—	—	—	2
Plymouth	2	—	—	—	—	5
Suffolk	see below	15	4	31	925	see * below
Worcester	1	1	—	4	—	—

SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY

FROM SEPTEMBER 1, 1951 TO SEPTEMBER 1, 1952

Transferred to Superior Court	Prerogative Writs	Referred to Master	Petitions for Admission to the Bar
11	42	1	1,277

Law Docket

Appeals from decision of Appellate Tax Board		7
Petitions for Admission to the Bar		1,277
Petitions for Writ of Error		18
Petitions for Writ of Mandamus		9
Petitions for Writ of Certiorari		13
Petitions for Writ of Habeas Corpus		2
Petitions for Stay of Execution		2
Petitions by Bar Association (Disciplinary Actions)		4
Petition for Re-instatement		1
Petition for Discharge under G. L. c. 123, s. 91		1
Reports of Special Commissioners		1
		1,335
Total Entries on Law Docket	*1,335*	

Equity Docket

Petitions for Declaratory Judgment		6
Petitions for Suspension of Decree of Superior Court		4
Petitions for Stay of Proceedings		2
Petitions for Review		2
Petitions for Appointment of Trustee		1
Petitions for Dissolution under G. L. c. 155, s. 50A (About 2,350 corporations)		4
Petitions for Dissolution (brought by individuals)		4
Bills of Complaint in Equity		9
Bills of Complaint under G. L. c. 25, s. 5		3
Petition under G. L. c. 175, s. 113B		1
Bills in Equity		4
Petition for Instructions		1
Information in Equity under G. L. c. 155, s. 11		1
		42
Total Entries on Equity Docket	*42*	
Total Entries on Both Dockets	1,377	

THE SUPERIOR COURT

This court consists of a chief justice and thirty-one associate justices. It has equity and civil and criminal jurisdiction and holds sessions in all of the fourteen counties. It is the only court sitting with juries. The tabulated returns of the clerks under St. 1936, chap. 31, § 3 for the year ending June 30, 1952, will be found on pp. 106-117.

To have a true picture of the work of the trial sessions one must take into consideration many cases settled during trials and others nonsuited or defaulted. An example is Suffolk County where a case is deemed tried only when a trial results in a verdict or disagreement.

Motion sessions are held regularly in Suffolk, Middlesex, Worcester, Hampden and Essex and Norfolk Counties. In other counties motions are considered at jury-waived sessions. Many questions are considered by the court at these sessions. Pre-trial sessions are reported below:

APPELLATE DIVISION, SUPERIOR COURT

FOR THE REVIEW OF SENTENCES TO THE STATE PRISON AND REFORMATORY FOR WOMEN

APPEALS IN INDICTMENT CASES UNDER ST. 1943, CH. 558

NOVEMBER 1, 1951—OCTOBER 31, 1952

(Report by the Clerk of Suffolk County for Criminal Business)

Number of appeals pending October 31, 1951	36	Sentences increased	5
Number of Appeals filed	217	Appeals dismissed	166
Sentences modified	42	Appeals withdrawn	39
		Pending October 31, 1952	1

The division consisting of three justices sat 18 days.

Appeals where the sentence has been modified or increased by the Appellate Division from November 1, 1951 to October 31, 1952.

Offence	*Original Sentence*	*New Sentence*
B&E Night with intent to commit a felony	6-8 yrs.	3-8 yrs.
	10-12 yrs. from and after sent. serving	7-12 yrs from and after sent. serving
	3-5 yrs.	2 yrs. House of Correction
B&E Day with intent to commit a felony	3-5 yrs.	6-8 yrs.

Offence	*Original Sentence*	*New Sentence*
Larceny	4-5 yrs.	2½-5 yrs.
Larceny of auto	9-10 yrs.	6-10 yrs.
Robbery Armed	8-12 yrs.	Mass. Reformatory
	7-9 yrs.	Mass. Reformatory 5 yrs. 1 day
	7-9 yrs.	Mass. Reformatory 5 yrs. 1 day
	7-10 yrs.	Mass. Reformatory 5 yrs. 1 day
Robbery	18-20 yrs.	12-15 yrs.
Incest	8-10 yrs.	5-7 yrs.
Manslaughter	10-14 yrs.	7-14 yrs.

Appeals where the sentence has been modified or increased by the Appellate Division from November 1, 1951 to October 31, 1952 and the defendant has appealed from more than one sentence.

	5-7 yrs.	8-10 yrs.
A. B&E Night with intent	5-7 yrs. conc.	8-10 yrs. conc.
to commit a felony	5-7 yrs. conc.	8-10 yrs. conc.
B. Assault to Rob	4-5 yrs.	8-10 yrs.
B&E Night with intent to commit a felony	4-5 yrs. from and after sent. serving	Appeal Dismissed
Carry. Dang. Weapon	2½-3 yrs. from and after sent. serving	Appeal Dismissed
C. Assault intent to Murder—Armed	7-10 yrs.	Appeal Dismissed
A&B by means of a dang. weapon	7-10 yrs. conc.	On File
D. Mayhem	3-5 yrs.	2 yrs. House of Correction
A&B by means of a dang. weapon	3-5 yrs. conc.	2 yrs. House of Correction conc.
E. Sodomy	7-10 yrs.	4-7 yrs.
Rape	7-10 yrs. conc.	4-7 yrs. conc.
F. B&E Night with intent	4-6 yrs.	Mass. Reformatory
to commit a felony	4-6 yrs. conc.	Mass. Reform conc.
Assault with intend to Rob.—Armed	3-5 yrs. conc.	Mass. Reform conc.
Poss. Burg. Implements	4-6 yrs. conc.	Mass. Reform conc.
G. Assault intent to Rob	12-15 forthwith	8-15 yrs. forthwith
Rob. Armed	12-15 yrs. conc.	8-15 yrs. conc.
Rob. Armed	12-15 yrs. conc.	8-15 yrs. conc.
Rob. Armed	12-15 yrs. conc.	8-15 yrs. conc.

H. Assault intent to Rob	15-20 yrs.	Appeal Dismissed
Rob. Armed	Life from and after	15-20 yrs. from and after
Rob. armed	Life conc.	15-20 yrs. conc.
Rob. armed	Life conc.	15-20 yrs. conc.
I. Assault intent to Rob	15-20 yrs.	10-15 yrs.
Rob. Armed	15-20 yrs. conc.	10-15 yrs. conc.
Rob. Armed	15-20 yrs. conc.	10-15 yrs. conc.
Rob. Armed	15-20 yrs. conc.	10-15 yrs. conc.
J. A&B by means of a dang. weapon	2½-5 yrs.	
	2½-5 yrs. conc.	Appeal Dismissed
Carrying a Pistol	2½-5 yrs. conc.	Appeal Dismissed
Carrying a Pistol	12-15 yrs. from and after sent. serv.	Appeal Dismissed
Rob. Armed	12-15 yrs. from and after sent. serving	Appeal Dismissed
Rob. Armed	12-15 yrs. from and after sent. serving	12-15 yrs. conc.
K. Rob. Armed	7-10 yrs.	Mass. Reformatory 5 yrs. 1 day
Rob. Armed	7-10 yrs. conc.	Mass. Reformatory 5 yrs. 1 day conc.
L. Rob. Armed	7-10 yrs.	Mass. Reformatory 5 yrs. 1 day
Rob. Armed	7-10 yrs. conc.	Mass. Reformatory 5 yrs. 1 day conc.
M. Attempt B&E Night with intent to commit felony	2½-5 yrs.	Mass. Reformatory
B&E Night with intent to commit a felony	2½-5 yrs. conc.	Mass. Reform. conc.
B&E Night with intent to commit a felony	2½-5 yrs. conc.	Mass. Reform. conc.
N. Assault with intent to Murder—Armed	9-12 yrs.	Appeal Dismissed
A&B by means of a dang. weapon	8-10 yrs. conc.	On File
O. Assault with intent to Murder—Armed	9-12 yrs.	Appeal Dismissed
A&B by means of a dang. weapon	8-10 yrs. conc.	On File

References to Auditors and Masters in the Superior Court and Expenditures—Calendar Year 1951

(See Notes 1 and 2 below)

County	*Master*	*Auditor*	*Expenditures*
Barnstable	9	15	$6,633.13
Berkshire	8	4	5,466.31
Bristol	35	15	6,517.25
Dukes	—	—	———
Essex	25	9	5,430.73
Franklin	2	—	649.86
Hampden	11	2	2,823.91
Hampshire	2	1	1,232.00
Middlesex	36	45	18,303.25
Nantucket	—	—	———
Norfolk	6	7	3,549.00
Plymouth	10	5	2,213.75
Suffolk (Civil)	77	28	22,084.75
Worcester	11	14	3,914.50
	232	145	$78,818.44

Note 1 (References)—Two or more cases to be tried together are counted as one reference.
Note 2 (Expenditures)—In Berkshire, Bristol and Suffolk Counties these figures apply to the Superior Court only. In other counties they include Supreme Judicial, Probate and Land Courts.

SUMMARY OF WORK OF PRE-TRIAL SESSIONS—SUFFOLK COUNTY SEPTEMBER 1951 TO JULY 3, 1952

Trials: (cases pre-tried and sent to various sessions for trial)

	Sept.-Dec. 1951	Jan.-Mar. 1952	Apr.-July 1952	Total Total
Jury Sessions	627	697	402	2109
Without Jury Sessions	13	2	7	
"A" Sessions	108	107	146	
Totals	748	806	555	2109

Settlements:

	Sept.-Dec. 1951	Jan.-Mar. 1952	Apr.-July 1952	Total Total
On pre-trial list and at pre-trial hearings	161	345	189	1572
On Jury list and "A" list before cases were sent out for trial	349	291	237	
Totals	510	636	426	1572

Non-Suits at Pretrial Hearings		135
Defaults at Pre-Trial Hearings		125
Non-Suits and Defaults at Pre-Trial Hearings		97
Continuances at Pre-Trial Hearings and Jury and "A" Lists		1067
Auditors and Masters appointed at Pre-Trial Hearings		45
Total disposed of on the Pre-Trial list as above		5148
Cases Pre-Tried and assigned for trial but not reached for trial		1138

MIDDLESEX COUNTY PRE-TRIAL REPORT

WEEK OF OCTOBER 29, 1951

Number of cases on list		285
Nonsuits		2
Defaults		4
Nonsuits and Defauts		7
Continued for Pre-Trial		89
November, 1951	81	
December, 1951	7	
January, 1952	1	
Added to Jury Trial List		132
November, 1951	112	
December, 1951	14	
January, 1952	6	
Added to Jury Waived List		4
Referred to Auditor		1
Transferred to Suffolk		1
Continued Generally		14
Miscellaneous		7
Settled		24

WEEK OF NOVEMBER 26, 1951

Number of cases on list		284
Nonsuits		1
Defaults		4
Nonsuits and Defauts		2
Continued for Pre-Trial		87
December, 1951	75	
January, 1952	6	
February, 1952	4	
April, 1952	2	
Added to Jury Trial List		126
December, 1951	45	
January, 1952	76	
February, 1952	3	
April, 1952	2	
Added to Jury Waived List		5
Referred to Auditor		4

Transferred to Suffolk	1
Continued Generally	8
Miscellaneous	2
Settled	44

WORCESTER COUNTY

PRE-TRIAL REPORT JUNE 30, 1951 TO JULY 1, 1952

Pret-Trial	461
Nonsuit or Default	12
Jury Waived	18
Advanced for Speedy Trial	22
Settled	30
Discontinued	6

PRE-TRIAL IN HAMPDEN COUNTY, JULY 1, 1951 TO JUNE 30, 1952

Number of cases on pre-trial list			1029
Number of cases pre-tried	797		
Groups of cases pre-tried		529	
Number of cases added to next pre-trial list	138		
Groups of cases added to next pre-trial list		103	
Number of cases settled	72		
Groups of cases settled		56	
Number of cases in which jury trial was waived	9		
Number of cases defaulted	9		
Number of cases non-suited	3		
Number of cases referred to an Auditor	1		

ESSEX COUNTY

There were four days of pre-trial from July 1, 1951 to June 30, 1952, at which 240 cases were pre-tried. The result was that 59 cases were settled, 3 were sent to auditors, 6 to the jury waived lists, and 172 to the jury trial lists.

LAND COURT

This is a court of three judges created in 1898 for the registration of title to land and since then developed by additional extensions of jurisdiction both at law and in equity into the court in which almost all litigation regarding title to land takes place in addition to its original function of a court for the registration of title.

JULY 1, 1951 TO JUNE 30, 1952

CASES ENTERED

Land Registration	631
Land Confirmation	10
Land Registration, Subsequent	770
Tax Lien	479
Miscellaneous	303
Equity	1,008
Total Cases Entered	3,201

Decree plans made	491
Subdivision plans made	1,012
Total plans made	1,503
Total appropriation	$264,151.00
Fees sent to State Treasurer	78,398.46
Income from Assurance Fund applicable to expenses	10,972.76
Total expenditures	261,786.08
Net cost to Commonwealth	172,414.86
Assurance Fund June 30, 1952	346,197.40
Assessed value of land on petitions in registration and confirmation cases entered	4,217,566.40
CASES DISPOSED OF BY FINAL ORDER DECREE OF JUDGMENT BEFORE HEARING	
Land Registration	532
Land Confirmation	3
Land Registration, Subsequent	734
Tax Lien	708
Equity and Miscellaneous	972
Total Cases Disposed of	2,949

PROBATE COURTS

There is a probate court in each county with jurisdiction of wills, trusts, settlement of estates, guardianship, adoption, change of name, divorce and separate maintenance and a variety of other matters. There are now three judges in Suffolk, and in Middlesex, two in Essex, Worcester, Hampden, Norfolk and Bristol, one in each of the other counties.

The report prepared by the Administrative Committee of the Probate Courts for the year 1951 appears on page 118.

THE MUNICIPAL COURT OF THE CITY OF BOSTON

This court consists of a chief justice and eight associate justices, all full time judges. There are also special justices. The tables showing the *details* of the civil business for the year 1949-50 will be found on pp. ——. The comparative table of civil business from 1913 to 1939 will be found in the 15th Report, p. 65. The condensed civil and criminal business and other information for the year 1951-52 is as follows:

MUNICIPAL COURT OF THE CITY OF BOSTON

CIVIL ACTIONS (OTHER THAN SMALL CLAIMS CASES) 1951–52

YEAR	Entered	Removed	Per Cent of Entries	All Defaults	Per Cent of Entries	Tried	Per Cent of Entries	Total Plaintiff's Judgments	Average Plaintiff's Judgments Contract only	Heard, Appellate Division	Per Cent of Trials	To Supreme Judicial Court from Appellate Division	To Supreme Judicial Court under Employment Security Law
1951	17,664	859	4.9	7,545	42.7	1,650	9.3	$2,636,882.67	$222.09	22	1.3	10	0
1952 9 mos.	13,659	739	5.4	5,866	42.9	1,274	9.3	$1,997,243.65	$226.39	15	1.2	4	5

SUBDIVISION—CONTRACT AND TORT—1951-1952

Year	Entered		Removed				Tried	
	Contract	Tort	Contract	Per Cent of Entries	Tort	Per Cent of Entries	Contract	Tort
1951	11,201	5,428	283	2.5	509	9.4	666	729
1952 9 mos.	8,624	4,256	266	3.1	441	10.4	450	615

TORT ENTRIES, REMOVALS AND TRIALS

1951

TORTS ENTERED		TORT REMOVALS		TORTS TRIED	
Motor Vehicle	3,952	Motor Vehicle, Def.	431	Motor Vehicle	619
Other Torts	1,476	Other Torts	78	Other Torts	110
Total	5,428	Total	509	Total	729

1952 (9 months)

TORTS ENTERED		TORT REMOVALS		TORTS TRIED	
Motor Vehicle	3,401	Motor Vehicle, Def.	372	Motor Vehicle	537
Other Torts	855	Other Torts	69	Other Torts	78
Total	4,256	Total	441	Total	615

Appeals to Supreme Judicial Court under Employment Security Law

1951		1952 (9 months)	
Appeals—Filed	—	Appeals—Filed	5
Appeals—Perfected	—	Appeals—Perfected	—
Appeals—Affirmed	4	Appeals—Affirmed	—
Appeals—Reversed	—	Appeals—Reversed	—

Summary Process (Ejectment) Entries

1951	546
1952 (9 Months)	430

Supplementary Process Entries

1951	2,556
1952 (9 Months)	1,933

MUNICIPAL COURT OF THE CITY OF BOSTON
SMALL CLAIMS DIVISION

	1952			(9 months)		
	Contract	Tort	Total	Contract	Tort	Total
Actions Entered	1,291	260	1,551	1,015	238	1,253
Actions Settled	318	70	388	225	90	315
Counter-Claims or Set-Offs	3	4	7	—	2	2
Trials	240	148	388	172	134	306
Reserved	76	83	159	62	73	135
Finding for Plaintiff	177	97	274	134	99	233
Finding for Defendant	69	45	114	32	35	67
Judgments by Default	517	3	520	476	11	487
Judgments by Non-Suit	11	3	14	10	3	13
Amount of Plaintiff's Judgments	$19,071.38	$2,904.32	$21,975.70	$16,660.74	$3,298.04	$19,958.78
Transferred to Regular Civil Docket	9	4	13	8	8	16
Removed to Superior Court	5	4	9	1	2	3
Executions	355	61	416	141	59	200
Amount of Plaintiff's Claims	$37,078.04	$9,575.86	$46,653.90	$29,540.19	$8,506.68	$38,046.87
Notices Returned Unclaimed	330	18	348	272	15	287

EXECUTION DEPARTMENT—PAID ORDERS

1951			1952 (9 months)	
Order of Notice	645		541	
Certificate	849		610	
Special Precept	169		104	
Supersedeas	1		7	
Comm.—Deposition	32		24	
Transcript	33		18	
Opinion	11		9	
Order of Sale	6		4	
Copies	49		41	
		1,795		1,358

SUPPLEMENTARY PROCESS DEPARTMENT

1951			1952 (9 months)	
Summons	3,193		2,730	
Capias	3,422		1,654	
Notice to Show Cause	1,173		758	
		7,788		5,142

(For Criminal business see p. 103)

THE BOSTON JUVENILE COURT

The Boston Juvenile Court, created in 1906, is a separate court with jurisdiction in juvenile cases in the central district of Boston. It has one judge and two special justices.

Complaints — October 1, 1951—September 30, 1952:

	Boys	*Girls*	*Totals*	
Juvenile Criminal	5	—	5	
Delinquent	609	253	862	
Wayward	—	5	5	
	614	258	872	
Adults:				
Men	29			
Women	29			
			58	
Neglected Child Complaints			16	(representing 43 children)
TOTAL NUMBER OF COMPLAINTS			946	

Active as of September 30, 1952:

	Individuals		*Complaints*	
Juveniles:				
Boys	265		290	
Girls	153		156	
Total	418		446	
Adults:				
Men	27		29	
Women	31		31	
Total	58		60	
Neglected children	110		40	
Totals	586		546	
Number of Cases:				
Juveniles	418			
Adults	58			
Neglected children	40			
	516			
Out-of-State cases under supervision	6	boys		

MUNICIPAL COURT OF THE CITY OF BOSTON FOR CRIMINAL BUSINESS

OCTOBER 1, 1951—SEPTEMBER 30, 1952

TOTAL BUSINESS OF COURT:

1.	Automobile Violations	1,155
2.	Traffic Violations	24,152
3.	Domestic Relation	430
4.	Drunkenness in Court	7,528
5.	Drunkenness Released by Probation Officer	7,001
6.	Other Criminal Cases	4,412
7.	Inquests Entered	7
8.	Search Warrants Issued	79
9.	GRAND TOTAL BUSINESS	44,764

DISPOSITIONS:

1.	Pleas of Guilty	22,331
2.	Pleas of Not Guilty	3,180
3.	Placed on file before trial, after trial, dismissed, nol-prossed, quashed, etc.	9,041
4.	Defendants not arrested, pending for trial	2,731
5.	Defendants Acquitted	925
6.	Defendants Bound Over to Grand Jury	592
7.	Defendants placed on probation (not including surrenders)	2,837
8.	Defendants fined and paid	17,999
9.	Imprisonments	2,433
10.	Fines Appealed	230
11.	Imprisonment Appealed	880
12.	Defendants pending for sentence	9

NON-CRIMINAL PARKING LAW:

1.	Parking tags turned in by violators as issued by Police	303,489

FINANCES:

1.	Money received by parking-tag office	$359,614.41
2.	Money received from Court fines, forfeitures and fee, etc.	$ 66,428.00
3.	Total moneys received and turned over to Commonwealth, County, City of Boston, etc.	$426,042.41
4.	Moneys received as bail by Court and forwarded to Superior Court or returned to defendant	$288,809.00
5.	Total moneys handled by the Court	$714,851.41

The Appellate Tax Board is an administrative tribunal, to which have been transferred some of the functions formerly imposed on the Superior Court. It came into existence under St. 1937, c. 400, on May 29, 1937, succeeding the old Board of Tax Appeals created in 1931 and later abolished.

In previous years we have included statistical tables of the work of the Board. This year, to avoid unduly extending this report the Council refers to the report made to the legislature under G. L. Chapter 58A, Section 4 for the year ending June 30, 1952.

MUNICIPAL COURT OF THE CITY OF BOSTON FOR CIVIL BUSINESS

Summary, 1951

	Actions Entered—Total	Actions Removed to Superior Civil Court—Total	Actions Defaulted	Ints. Filed		Marked for		Trial List				Findings		Appellate Division											
				To Plaintiff	To Defendant	Motion List	Trial List	Non-Suits	Defaults	Tried	Reserved	For Plaintiff	For Defendant	Requests for Report	Reports Allowed	Reports Dis-Allowed	Petitions to Establish	Reports Proved	Cases Heard	Cases Decided	Affirmed	Reversed	Modified	Entire Re-Trial Ordered	Partial Re-Trial Ordered
Contract	11,201	2,834	6,774	340	1,050	—	—	—	—	666	394	518	125	45	22	—	4	—	21	21	15	3	2	1	—
Tort	5,428	509	500	3,599	2,913	—	—	—	—	729	545	414	303	12	—	—	—	—	—	—	—	—	—	—	—
Contract or Tort	399	66	38	48	78	—	—	—	—	49	47	—	15	1	—	—	—	—	1	1	1	—	—	—	—
All Others	636	1	233	—	2	—	—	—	—	206	54	160	38	1	—	—	—	—	—	—	—	—	—	—	—
Totals	17,664	859	7,545	3,987	4,043	3,487	10,649	128	607	1,650	1,040	1,092	481	59	22	—	4	—	22	22	16	3	2	1	—
1952 — January 1 – September 30 — 9 Months																									
Totals	13,659	739	5,866	3,597	3,842	2,745	8,161	77	458	1,274	754	899	389	55	30	—	1	—	15	15	12	2	—	1	—

MUNICIPAL COURT OF THE CITY OF BOSTON FOR CIVIL BUSINESS

MUNICIPAL COURT OF THE CITY OF BOSTON FOR CIVIL BUSINESS

SUMMARY, 1951—*Continued*

	Appellate Division—Con.							Defendants' Judgments						Plaintiffs' Judgments								
	Motions	Cases Consolidated Under G. L. c. 223, s. 2, as amended	Appeals to Supreme Judicial Court	Appeals to Supreme Judicial Court—Perfected	Appeals to Supreme Judicial Court—Affirmed	Appeals to Supreme Judicial Court—Reversed	Appeals to Superior Civil Court	Entered by Non-Suit	Entered by Trial—Open Court	Entered by Trial—After Reservation	Entered by Agreement	Total Defendants' Judgments	Neither Party by Agreement	Entered by Default	Entered by Trial—Open Court	Entered by Trial—After Reservation	Entered by Agreement	Total Plaintiffs' Judgments	Amount of Plaintiffs' Judgments	Average Amount of Plaintiffs' Judgments	Executions Issued	Actions Transferred under Chapter 369, Acts 1943 as amended
Contract.....	—	4	10	5	5	2	—	24	27	98	34	183	218	6,577	245	273	896	7,991	$1,774,701.80	$222.09	7,774	—
Tort	—	31	—	—	—	—	—	86	36	267	16	405	383	7	148	266	3,078	3,499	860,950.22	246.06	678	—
Contract or Tort..	—	1	—	—	—	—	—	7	2	13	2	24	22	—	—	—	—	—	—	—	—	—
All Others.....	—	—	—	—	—	—	—	—	19	19	1	39	5	157	133	27	40	357	1,230.65	345	305	—
Totals.....	—	36	10	5	5	2	7	117	84	397	53	651	628	6,741	526	566	4,014	11,847	$2,636,882.67	$222.58	8,757	88

1952 — JANUARY 1 - SEPTEMBER 30 — 9 MONTHS — *Continued*

Totals.....	4	19	4	5	3	1	7	58	73	316	98	545	502	4,833	447	452	2,935	8,667	$1,997,243.65	$230.44	6,353	107

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CRIMINAL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1952

Counties	CRIMINAL CASES													
	Number remaining at first of year.	Number of Indictments returned.	Number of appeal cases entered.	Appeals withdrawn before sitting following Entry.	Appeals withdrawn after next sitting, under St. 1937, c. 311.	Number of actions on bail bonds for recognizances entered.	Number disposed of in previous years brought forward for redisposition.	Indictments waived.	Number disposed of during year.	Number remaining at end of year.	Number tried during year.	Number awaiting trial at end of year.	Number of days during which a Superior Court judge has sat for trials, hearings or dispositions.	Days District Court judges were called in to sit in Superior Court.
Barnstable	57	70	73	17	1	3	0	4	116	73	31	40	24	15
Berkshire	101	70	65	13	20	0	2	31	130	106	23	105	15	7
Bristol	87	247	429	42	33	0	10	82	720	115	136	72	47	38
Dukes	1	0	5	2	0	0	0	0	2	1	1	1	7	0
Essex	22	360	461	109	11	2	37	70	752	80	68	73	65	
Franklin	19	40	40	9	7	0	0	4	69	18	12	14	16	6
Hampden	154	171	160	21	27	0	0	91	375	163	39	154	38	10
Hampshire	64	15	45	13	2	0	11	25	81	79	13	33	4+	9
Middlesex	478	938	780	85	105	0	64	28	2,054	424	349	429	190	14
Nantucket	0	0	4	0	0	0	0	0	4	0	4	0	3	0
Norfolk	231	650	348	29	47	2	90	31	1,046	230	123	225	53	49
Plymouth	75	353	204	22	4	0	234	11	732	92	116	9	61	22
Suffolk	328	1,128	2,665	103	78	6	228	18	3,829	363	950	340	496	43
Worcester	275	480	305	49	35	11	21	134	773	369	151	352	81	53
Total	1,892	4,522	5,584	514	370	24	697	529	10,683	2,113	2,016	1,842	1,100+	266

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1952

MADE BY THE CLERKS OF COURT TO THE JUDICIAL COUNCIL IN COMPLIANCE WITH ST. 1936, C. 31, § 3

COUNTY	CIVIL CASES											
	Table 1 — NUMBER UNDISPOSED OF AT BEGINNING OF YEAR											
	LAW											
	JURY CASES				NON-JURY				Equity	Divorce and Nullity	Total Jury Cases	Total Non-Jury
	Contracts	Motor Torts	Other Torts	All Others	Contracts	Motor Torts	Other Torts	All Others				
Barnstable	155	115	59	24	90	5	11	16	233	0	353	122
Berkshire	104	196	65	33	59	9	7	9	121	0	398	84
Bristol	405	1,361	334	69	80	45	29	26	286	0	2,169	180
Dukes	5	0	5	2	3	0	1	0	8	0	12	4
Essex	818	2,027	745	126	119	65	19	27	412	0	3,716	230
Franklin	15	97	9	12	22	0	9	7	65	1	133	38
Hampden	434	1,732	463	91	201	82	28	44	495	0	2,720	355
Hampshire	81	166	31	12	16	3	4	10	95	137	290	33
Middlesex	1,224	6,385	2,064	315	400	144	100	142	1,284	1	9,988	786
Nantucket	2	7	3	0	2	0	0	0	1	0	12	2
Norfolk	389	1,205	366	28	121	68	26	97	300	0	1,988	312
Plymouth	203	447	135	67	69	13	4	16	346	0	852	102
Suffolk	2,350	9,356	4,839	1,349	498	16	121	340	2,694	16	17,894	975
Worcester	702	3,409	963	135	182	121	45	66	452	0	5,209	414
Totals	6,887	26,503	10,081	2,263	1,862	571	404	800	6,792	155	45,734	3,637
Combined Totals	45,734				3,637				6,792	155	45,734	3,637
	Total undisposed of all kinds 56,318											

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1952—*Continued*

CIVIL CASES

Table 2 — Number of New Cases Entered During the Year

County	Original Writs				Removals from District Courts								Equity	Divorce and Nullity	All Others
					By Plaintiff or Order of Ct.				By Defendant						
	Contracts	Motor Torts	Other Torts	All Others	Contracts	Motor Torts	Other Torts	All Others	Contracts	Motor Torts	Other Torts	All Others			
Barnstable	86	80	26	0	0	0	0	0	33	7	1	0	113	0	28
Berkshire	45	194	21	65	0	3	0	0	32	9	6	1	99	1	0
Bristol	149	717	165	44	0	18	0	3	110	235	38	5	146	1	0
Dukes	6	2	1	0	1	0	0	0	1	1	0	0	2	0	0
Essex	357	1,119	343	6	0	28	0	0	178	500	91	2	303	0	124
Franklin	22	118	18	0	0	0	0	0	6	8	1	0	29	1	18
Hampden	230	1,311	261	45	0	0	0	0	68	154	29	0	221	0	0
Hampshire	32	114	16	25	0	1	0	0	11	28	4	1	30	67	0
Middlesex	598	3,062	708	206	0	0	0	9	220	1,029	128	16	573	2	0
Nantucket	4	4	2	1	0	0	0	0	2	2	0	0	0	0	0
Norfolk	194	718	191	109	121	190	24	4	0	0	0	0	107	0	0
Plymouth	103	290	62	0	0	0	0	0	30	73	8	0	197	0	49
Suffolk	1,038	4,702	2,247	634	14	151	14	4	373	912	200	23	1,278	0	0
Worcester	340	1,963	562	43	0	25	0	0	90	127	32	13	230	0	0
Totals	3,204	14,394	4,623	1,178	136	416	38	20	1,174	2,185	539	61	3,328	72	219
Combined Totals	23,399				610				3,959						
Total removals	4,569														
Grand Total Entries	31,587														

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1952—*Continued*

County	Total Jury Trials	Total Non-Jury Trials Incl. Eq. and Div.	CIVIL CASES — Table 3 — Number of Trials Cases Tried									
			Jury				Non-Jury				Equity	Divorce and Nullity
			Contracts	Motor Torts	Other Torts	All Others	Contracts	Motor Torts	Other Torts	All Others		
Barnstable	10	13	1	5	2	2	6	1	1	0	5	0
Berkshire	15	3	5	2	3	5	0	0	0	1	2	0
Bristol	232	35	36	162	33	1	7	10	3	2	12	1
Dukes	3	0	0	2	1	0	0	0	0	0	0	0
Essex	263	81	46	171	32	14	21	12	10	3	35	0
Franklin	20	0	0	18	1	1	0	0	0	0	0	0
Hampden	191	53	26	134	29	2	6	4	1	4	38	0
Hampshire	43	85	5	33	3	2	2	1	0	0	5	77
Middlesex	437	68	64	270	76	27	26	26	7	9	96	12
Nantucket	4	4	1	3	0	0	1	0	2	0	1	0
Norfolk	102	25	16	49	26	11	7	4	2	4	8	0
Plymouth	61	15	18	36	4	3	5	0	1	2	7	0
Suffolk	544	661	93	260	147	47	92	59	14	32	464	0
Worcester	134	44	9	77	47	1	1	0	0	0	43	0
Total	2,059	1,087	320	1,222	404	116	174	117	41	57	716	80
Combined totals			2,062				389				716	80
Total trials			3,247									

Note. Hampden, number of trials ending in settlements — cases taken from the jury, not reported above: Contracts, 9; Motor Torts, 57; Other Torts, 5; All Others, 1; Total 72.

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1952—*Continued*

CIVIL CASES

Table 4 — Number of Jury Verdicts

County	For Plaintiff												For Defendant					
	Less than $200			$200 to $500			$500 to $1,000			Over $1,000			Ordered			Not Ordered		
	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts
Barnstable	0	0	0	0	4	1	0	0	0	1	0	0	0	0	0	0	1	1
Berkshire	0	1	0	1	0	0	0	0	0	0	1	1	2	0	1	2	0	1
Bristol	2	2	1	2	3	2	4	9	1	1	19	2	1	7	6	4	36	1
Dukes	0	2	0	0	0	1	0	0	0	0	0	1	0	0	0	0	0	0
Essex	1	8	2	4	9	2	5	10	2	7	28	6	5	11	5	7	34	2
Franklin	0	2	0	0	2	0	0	2	0	0	5	1	0	0	0	0	7	0
Hampden	2	31	4	6	31	4	4	29	4	3	37	8	1	3	8	17	75	4
Hampshire	0	0	0	2	1	0	1	5	1	0	9	1	0	5	0	2	5	1
Middlesex	7	15	2	3	35	5	14	35	6	24	74	25	4	4	6	11	109	32
Nantucket	0	0	0	0	1	0	0	2	0	0	0	0	0	0	0	1	0	0
Norfolk	0	1	1	1	2	2	0	6	0	3	3	7	1	4	1	3	13	6
Plymouth	1	10	0	3	5	1	5	9	0	2	3	0	0	0	1	4	23	3
Suffolk	4	12	4	6	22	4	13	32	10	31	75	43	11	10	28	28	109	58
Worcester	0	2	2	2	4	5	1	5	5	4	22	17	0	9	3	1	25	10
Totals	17	86	16	30	119	27	47	144	29	76	276	112	25	53	59	80	437	119
	Totals for Plaintiff, 979												Totals for Defendant 773					

Note. Plymouth 1 ejectment, 1 assessment of damages ordered, 1 assessment of damages.

Note. In the 27th, and some earlier reports, the total verdicts for plaintiff were erroneously stated by inadvertence because of adding in the totals of columns of verdicts "ordered" and "not ordered". Those columns are omitted from the table this year to avoid error.

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1952—*Continued*

CIVIL CASES

Table 5 — NUMBER OF NON-JURY FINDINGS

County	Findings for Plaintiff												Findings for Defendant		
	Less than $200			$200 to $500			$500 to $1,000			Over $1,000					
	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts
Barnstable	0	0	0	2	0	0	1	0	0	1	1	1	2	0	0
Berkshire	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Bristol	0	1	0	0	1	1	0	3	0	0	3	0	7	2	2
Dukes	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Essex	1	1	5	4	1	3	3	1	0	2	1	1	6	3	1
Franklin	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Hampden	0	0	0	2	0	0	0	2	0	1	2	0	3	0	1
Hampshire	0	0	0	0	1	0	0	0	0	1	0	0	1	0	0
Middlesex	5	1	2	4	9	1	3	2	0	4	2	0	19	15	3
Nantucket	0	0	0	0	0	0	1	0	0	0	0	0	0	0	2
Norfolk	0	0	0	1	2	0	0	0	0	2	0	1	1	0	1
Plymouth	0	2	0	2	0	0	1	5	0	1	0	0	4	5	0
Suffolk	10	13	2	29	10	4	8	5	4	24	6	1	21	25	3
Worcester	0	0	0	3	1	0	2	0	0	1	0	0	5	0	1
Total	16	18	9	47	25	9	19	18	4	37	15	4	69	50	14
Combined Totals	43			81			41			56			133		
	Total for Plaintiff 221												For Defendant 133		

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1952—*Continued*

County	CIVIL CASES																Equity	Div. and Nul.
	Table 6 Finally Disposed Of																	
	Jury								Non-Jury									
	On Auditor's Report				Otherwise				On Auditor's Report				Otherwise					
	Contracts	Motor Torts	Other Torts	All Others	Contracts	Motor Torts	Other Torts	All Others	Contracts	Motor Torts	Other Torts	All Others	Contracts	Motor Torts	Other Torts	All Others		
Barnstable	0	0	0	0	65	67	25	8	1	0	0	2	31	1	3	5	79	0
Berkshire	1	0	1	0	39	135	26	22	1	0	1	1	21	5	4	5	44	0
Bristol	1	0	1	0	192	802	152	26	0	0	0	0	41	17	14	14	89	1
Dukes	0	0	0	0	5	1	1	0	0	0	0	0	2	0	1	0	3	0
Essex	8	0	0	0	371	1,394	368	58	8	0	0	0	105	55	18	29	280	0
Franklin	0	0	0	0	5	84	4	4	0	0	0	0	6	0	6	3	9	1
Hampden	0	0	0	0	349	2,282	435	73	0	0	0	0	99	26	33	12	325	0
Hampshire	0	0	0	0	33	156	14	7	0	0	0	0	10	4	0	4	19	64
Middlesex	1	0	0	0	526	3,289	585	100	0	0	0	0	162	88	26	125	534	0
Nantucket	0	0	0	0	1	0	0	0	0	0	0	0	1	0	4	0	1	0
Norfolk	2	0	0	0	123	654	122	29	2	0	0	0	35	30	7	57	63	0
Plymouth	0	0	0	2	78	271	45	27	2	0	0	0	30	2	4	15	114	0
Suffolk	1	0	0	2	1,106	4,628	1,695	171	0	0	0	1	394	133	62	134	776	0
Worcester	0	0	0	0	267	1,795	387	52	0	0	0	0	135	61	32	47	237	0
Totals	14	0	2	4	3,160	15,558	3,859	577	14	0	1	4	1,072	422	214	450	2,573	66
Combined Totals	20				23,154				19				2,158				2,573	66
Total disposed of, all kinds	27,990																	

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1952—*Continued*

County	CIVIL CASES													
	Table 7 — Cases Triable i. e. at Issue and Awaiting Trial and not Marked Inactive													
	Jury				Non-Jury				Triable but Enjoined				Equity	Divorce and Nullity
	Contracts	Motor Torts	Other Torts	All Others	Contracts	Motor Torts	Other Torts	All Others	Contracts	Motor Torts	Other Torts	All Others		
Barnstable	122	110	47	32	4	5	10	4	0	0	0	0	19	0
Berkshire	88	207	51	34	15	12	1	1	0	0	0	0	14	0
Bristol	321	1,344	340	70	84	41	31	12	5	5	1	0	76	0
Dukes	4	2	5	1	2	0	0	0	0	0	0	0	9	0
Essex	607	2,052	660	86	52	21	7	8	0	6	1	0	57	0
Franklin	28	120	21	19	8	0	1	1	0	0	0	0	20	0
Hampden	231	771	231	41	102	36	12	13	0	0	0	0	241	0
Hampshire	44	103	28	19	5	3	3	8	0	0	0	0	32	61
Middlesex	1,287	7,002	2,179	295	329	119	90	109	0	86	3	0	377	0
Nantucket	3	10	2	0	1	0	0	0	0	0	0	0	0	0
Norfolk	502	1,428	423	39	105	72	27	48	0	1	2	0	187	0
Plymouth	155	485	130	59	37	8	5	5	0	0	0	0	72	0
Suffolk	2,704	9,519	4,480	626	710	570	197	320	2	52	14	0	654	10
Worcester	673	3,517	1,069	98	123	77	55	39	0	20	0	0	182	0
Totals	6,769	26,670	9,666	1,419	1,577	964	439	568	7	170	21	0	1,940	71
Combined Totals	44,524				3,548				198				1,940	71

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1952—*Continued*

County	CIVIL CASES									
	Table 8 — Cases Remaining Undisposed of Including Cases Marked Inactive									
	Jury				Non-Jury				Equity	Divorce and Nullity
	Contracts	Motor Torts	Other Torts	All Others	Contracts	Motor Torts	Other Torts	All Others		
Barnstable	165	130	56	41	102	9	13	12	267	0
Berkshire	118	256	65	63	40	15	2	7	176	1
Bristol	380	1,520	375	74	123	55	38	24	336	0
Dukes	7	2	6	1	5	0	1	0	9	0
Essex	762	2,270	750	139	141	51	19	24	435	0
Franklin	33	139	24	24	21	0	3	6	85	1
Hampden	315	915	289	63	170	56	24	32	391	0
Hampshire	84	148	36	23	13	4	5	14	106	140
Middlesex	1,332	7,167	2,222	312	391	139	106	138	1,338	3
Nantucket	3	13	2	0	5	0	0	0	0	0
Norfolk	524	1,471	449	46	149	87	30	100	346	0
Plymouth	213	532	156	66	81	20	6	20	428	0
Suffolk	2,654	10,342	5,591	1,833	118	34	73	207	2,545	15
Worcester	723	3,638	1,101	105	189	151	82	53	445	0
Totals	7,313	28,543	11,122	2,790	1,548	621	402	637	6,907	160
Combined Totals	49,768				3,208				6,907	160
	Total undisposed of, all kinds — 60,043									

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1952—*Continued*

County	CIVIL CASES									
	Table 9				Cases Marked Inactive in Previous Years					
	Jury				Non-Jury				Equity	Divorce and Nullity
	Contracts	Motor Torts	Other Torts	All Others	Contracts	Motor Torts	Other Torts	All Others		
Barnstable	23	5	5	3	12	2	0	0	26	0
Berkshire	7	25	5	1	7	0	0	0	27	0
Bristol	0	6	4	0	3	5	0	0	32	0
Dukes	2	0	2	0	2	0	0	0	1	0
Essex	41	41	26	13	12	3	3	2	39	0
Franklin	2	8	1	2	3	0	0	4	7	0
Hampden	47	86	35	20	44	13	6	14	91	0
Hampshire	4	10	2	1	3	0	0	0	11	27
Middlesex	35	101	32	8	36	14	9	25	319	1
Nantucket	0	0	0	0	0	0	0	0	0	0
Norfolk	5	5	4	2	3	6	0	4	20	0
Plymouth	34	12	10	2	12	6	1	6	39	0
Suffolk	218	555	220	33	223	145	68	108	455	4
Worcester	37	45	29	16	25	2	4	6	49	0
Totals	455	899	375	101	385	196	91	169	1,116	32
Combined Totals	1,830				841				1,116	32

Total of all kinds marked inactive in previous years — 3,819

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1952—*Continued*

County	CIVIL CASES									
	Table 10 — Cases Marked Inactive During the Year									
	Jury				Non-Jury				Equity	Divorce and Nullity
	Contracts	Motor Torts	Other Torts	All Others	Contracts	Motor Torts	Other Torts	All Others		
Barnstable	5	4	3	2	9	0	0	1	16	0
Berkshire	4	7	1	0	18	1	0	0	17	0
Bristol	24	12	2	0	9	3	2	2	50	0
Dukes	0	0	0	0	0	0	0	0	0	0
Essex	39	33	24	5	8	2	2	2	24	0
Franklin	2	2	1	2	1	0	1	1	3	0
Hampden	41	57	26	7	29	7	8	0	55	0
Hampshire	7	11	3	1	3	1	1	1	15	18
Middlesex	34	130	27	9	29	3	6	16	135	0
Nantucket	0	0	0	0	0	0	0	0	0	0
Norfolk	11	22	12	0	16	4	1	12	46	0
Plymouth	20	16	7	4	10	4	0	2	59	0
Suffolk	133	426	223	30	127	87	28	88	378	1
Worcester	31	44	36	14	27	3	8	13	38	0
Totals	351	764	365	74	286	115	57	138	836	19
Combined Totals	1,554				596				836	19
	Total marked inactive of all kinds — 3,005									

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1952—*Continued*

County	CIVIL CASES										Table 12	
	Table 11 Inactive Cases Dismissed During Year										Number of Days in which Court Sat	
	Jury				Non-Jury				Equity	Divorce and Nullity	Jury	Non-Jury Including Equity and Motion and Pre-Trial Sessions
	Contracts	Motor Torts	Other Torts	All Others	Contracts	Motor Torts	Other Torts	All Others				
Barnstable	5	2	2	0	3	0	0	1	7	0	10	10
Berkshire	3	4	3	1	7	1	2	1	6	0	32	10
Bristol	0	1	0	0	0	0	1	0	2	0	124	28
Dukes	0	0	0	0	0	0	0	0	0	0	7	for both
Essex	14	15	0	0	2	1	0	0	8	0	289	84
Franklin	0	1	0	1	3	0	2	0	3	0	28	0
Hampden	12	25	12	11	10	3	0	3	32	0	191	108*
Hampshire	3	1	1	1	1	0	0	0	4	18	38	15
Middlesex	5	18	7	1	17	4	3	12	90	0	666	194
Nantucket	0	0	0	0	0	0	0	0	0	0	6	0
Norfolk	0	0	1	0	0	1	0	0	1	0	115	35
Plymouth	0	0	0	0	0	0	0	0	0	0	81	27
Suffolk	16	61	26	6	30	9	12	5	23	0	1,115	907
Worcester	32	61	49	0	14	0	3	1	26	0	250	96
Totals	90	189	101	21	87	19	23	23	202	18	2,952	1,514
Combined Totals	401				152				202	18	4,466	

**Note* Hampden:

Motion	18 days
Pre-trial	20 days
Merit	70 days
Total	108 days

Table 12 Worcester:

Worcester	201 days with juries
Fitchburg	49 days
Total	250 days

REPORTS OF REGISTERS OF PROBATE FOR YEAR ENDING DEC. 31, 1951

(Table prepared by the Administrative Committee of the Probate Courts)

	PROBATE—DECREES																DIVORCES			FEES COLLECTED				
	Original entries	Administrations Allowed	Wills allowed	Guardians Appointed	Conservators Appointed	Trustees Appointed	Accounts Allowed	Real Estate Sales	Real Estate Mortgages	Real Estate Partitions	Equity Decrees	Separate Support	Desertion and Living Apart	Custody	Other Decrees	Papers Recorded	Original Entries (New Cases)	Decrees and Orders Entered		Probate	Divorce	Certificates and Copies	Total	Commitment, Insane, Feeble Minded
																		Nisi	Others					
Barnstable	546	169	232	31	15	20	346	94	6	6	10	4	1	2	178	2,630	182	111	16	$3,120.50	$910.00	$1,952.72	$5,983.24	2
Berkshire	1,039	346	251	86	53	24	614	148	5	5	8	17	13	6	814	2,858	273	179	80	5,513.00	1,365.00	2,972.56	9,850.56	2
Bristol	2,338	891	645	153	50	76	700	426	13	9	14	71	10	12	1,463	7,901	781	559	547	10,442.00	3,889.00	6,486.80	20,817.80	6
Dukes	69	26	34	2	3	2	57	16	0	2	0	0	0	0	25	396	21	13	14	452.00	105.00	211.90	768.90	0
Essex	3,470	1,375	941	270	115	168	2,255	604	19	19	43	56	19	13	1,410	9,957	862	614	328	19,136.00	4,310.00	9,765.65	33,211.65	0
Franklin	497	148	121	28	20	14	246	59	2	3	1	2	1	1	174	2,354	111	83	33	2,350.50	550.00	993.40	3,893.90	3
Hampden	1,910	790	529	122	70	20	1,570	306	50	15	89	83	0	6	1,300	12,370	1,043	771	833	11,076.00	5,215.00	5,660.90	21,951.90	19
Hampshire	971	205	161	47	22	17	416	83	4	—	7	1	1	11	854	2,531	39	19	17	3,080.00	195.00	1,289.10	4,564.10	1
Middlesex	6,616	2,513	1,815	575	253	289	4,435	869	87	11	76	179	14	30	4,744	23,213	1,949	1,300	1,512	36,791.00	9,670.00	23,527.80	69,988.80	39
Nantucket	58	22	31	2	3	4	44	22	—	—	1	—	0	0	4	320	15	9	11	393.75	75.00	118.50	587.25	0
Norfolk	2,830	933	829	280	93	159	2,359	318	14	7	66	66	5	16	1,689	11,650	667	438	671	16,434.00	3,335.00	13,086.33	32,855.33	26
Plymouth	1,526	687	397	136	60	62	870	140	19	10	29	53	13	7	1,302	6,409	435	276	302	8,172.00	2,175.00	3,828.40	14,175.40	5
Suffolk	5,583	2,403	1,128	499	229	239	4,471	596	55	15	138	1024	15	39	2,422	27,648	2,048	1,304	2,064	33,634.00	10,185.00	16,933.45	60,752.45	1,448
Worcester	3,506	1,457	902	334	168	140	1,312	502	31	18	63	157	7	4	2,077	11,056	1,255	1,192	211	17,274.00	6,275.00	8,593.15	32,142.15	35

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